CONSIDERATIONS

ON THE

STATE OF INDIA.

fojee Rajah. 1830

CONSIDERATIONS
ON THE
PRESENT POLITICAL STATE
OF
INDIA;

EMBRACING
OBSERVATIONS ON THE CHARACTER OF THE NATIVES, ON THE CIVIL AND CRIMINAL COURTS, THE ADMINISTRATION OF JUSTICE, THE STATE OF THE LAND-TENURE, THE CONDITION OF THE PEASANTRY,
AND THE
INTERNAL POLICE OF OUR EASTERN DOMINIONS;
INTENDED CHIEFLY AS
A MANUAL OF INSTRUCTION IN THEIR DUTIES,
FOR THE
YOUNGER SERVANTS OF THE COMPANY.

BY
ALEXANDER FRASER TYTLER,
LATE ASSISTANT-JUDGE IN THE 24 PERGUNNAHS, BENGAL ESTABLISHMENT.

Omnium autem rerum, nec optius est quidquam ad opes tuendas, quàm diligi, nec alienius quàm timeri.

Non jam sunt mediocres hominum libidines, non paucæ insidiæ ac tolerandæ: nihil agitant nisi cædem, nisi incendia, nisi rapinas. Cic.

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THE TANJORE MAHARAJA SERFOJI'S SARASWATI MAHAL.

CONSIDERATIONS

ON THE

STATE OF INDIA.

CHAP. IV.

CONTINUATION OF THE CAUSES OF DELINQUENCY,—WANT OF A SUPERINTENDING BOARD OF POLICE.—RECEIVERS OF STOLEN PROPERTY NOT SUFFICIENTLY PUNISHED.—METHODS PROPOSED FOR THEIR DETECTION,—AND CONVICTION.—THE ALLOWING FELONS, AND OTHERS WHO HAVE ESCAPED FROM THE JAILS, OR HAVE BEEN SUMMONED ON OTHER TRIALS, AND THEN ABSCONDED, TO REMAIN AT LARGE IN THE SEVERAL DISTRICTS.—WANT OF EMPLOYMENT FOR RELEASED PRISONERS.

In order that Government should at all times be aware of the extent of criminality

 in

in their several districts, and should have before them proofs of the efficacy or inefficacy of the remedies which, from time to time, are applied towards checking the rapid strides of vice in general, or the increase of any particular species of crime, it is absolutely necessary that there should be a Superintending Board of Police, in which shall centre the reports from all the districts, and whose members, by becoming acquainted with the state of police in all the districts, and by comparing the merits of the different systems and plans of the Magistrates, shall be enabled to recommend a more general use of those which have proved successful.

The reports which should be forwarded from the different Magistrates to the Board of Superintendence of Police, are now furnished to the Sudder Dewany Adawlut; but, instead of being bare lists of criminals confined—sentenced,—on trial,—punished,

&c.

&c. they ought, in addition to these particulars, to contain every kind of information regarding the state of the police,—the condition of the peasants, the peculiar local circumstances of the district, as favouring robbery, or other crimes,—the plans adopted by the Magistrates,—the grounds on which they were adopted,—their success or failure,—particulars regarding the receivers of stolen property,—their names and places of abode,—the state of the jails,—of the roads,—the nature of the works on which the prisoners are employed.

From these documents, the Board ought annually to supply a full account to Government, of the state of police throughout the country; and these interesting reports might be forwarded to the Court of Directors, instead of those which are now sent, and which must contain but scanty information.

 When

When the Board of Superintendence shall have been established, and shall have acquired a name among the natives, abundance of information will be obtained respecting the haunts of the *Dacoits*; for to this Board will all the *Goindas* (or police spies) look up for rewards.

It is necessary that this office should be established in Calcutta; and this for two reasons.

First, Because access can there be had to all the public offices for information on all subjects; and because there, are already collected many documents on the subject of Police, which would add much information to the general stock, and which might easily be digested by the members of the Board and their assistants; and,

Secondly, Because Calcutta is the place of resort for people of all descriptions,—the hiding-

ing-place of thieves, robbers, and other criminals from all quarters, and the great market for the sale of stolen property. In Calcutta also, are assembled the agents on the part of the *Zemindars* from every quarter of the country, who conduct the business of their constituents at the Courts of Appeal, and *Sudder Dewany*; and there, there is a good jail for the confinement of prisoners, and in which experiments may be tried, which shall point out the proper methods of dieting and working convicts. There, also, a workhouse for released prisoners could best be established, if Government shall ever deem it necessary that so useful an establishment should be made.—On this last subject more will hereafter be said.

The attention of the members of this Board should be confined *solely to matters regarding the Police*. It is not enough that a few persons, having other responsible and busy situations, should meet for a few hours

each week; but the members ought to be required to keep their attention rivetted on that one subject, and to study the science of Police in all its branches. It is a science which, in no country, except France, has ever been deemed worthy of study. In England it was unknown, at least in the more extended signification of the term *Police*, till Mr. COLQUHOUN published his book on the subject; and after much enquiry I have never succeeded in finding an English work, which treats generally of this science. But few will now dispute its claim to public attention.

Under this Board, many of the young men, who are afterwards to fill the situations of Magistrates, might be educated, might be initiated into a knowledge of their duty, by inspecting the various reports of the Magistrates, and seeing the state of the police in the particular *Zillahs* in which they are afterwards to serve. The translation of native

native papers, making out lists, taking depositions, writing letters, reports, &c. might employ their time until they could be appointed to situations.

The members of this Board ought to be selected from among the most intelligent and experienced Magistrates. Two members, and a Register or Secretary, with a few assistants, would probably be found sufficient for the discharge of the duty.

They ought to be allowed to employ *Goindas*, but under restrictions and limitations, which shall yet prevent the abuses of this description of persons. These restrictions will be mentioned hereafter. The jail at Calcutta, which has in it prisoners from all the districts, will supply many excellent *Goindas*, whose services, however, must ever be used with much caution.

The management of the jails throughout

the country ought also to form a branch of Police, to which the Board of Superintendence should direct their attention. As to the evils attending the present management of *Zillah* jails, some observations will hereafter be offered.

The plan lately adopted by Government, of appointing two travelling Superintendents of Police; one for the Upper, and one for the Lower Provinces, has already been attended with much benefit; and it is by no means intended that the establishment of a Board of Police should at all interfere with their duties, or that the one should supersede the other. They are both very necessary, and their duties very distinct. The travelling Superintendents act as a check on the Magistrates whose districts they visit. The Board will form a general Office of Record for the whole country; but, at the same time, they ought always to correspond, and give every possible assistance to each other.

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It will not be necessary to say any more on this subject. I do not wish to be tedious; and have yet many subjects to which to direct the attention of the reader. For a description of the general utility of a superintending Board of Police, I refer the reader to COLQUHOUN's Work.

The next cause of delinquency enumerated is, "The insufficiency of the punishment "of receivers." To a consideration of this cause I shall now proceed.

The crimes of *Dacoity* and theft will always decrease in proportion to the certainty, more than the severity of their punishments, the smallness of the chance of escaping detection, and the difficulty of disposing of the stolen property. But where there exists an easy method of disposing of their booty, in vain shall we increase the punishment, or diminish the chance of escape. There will ever be found those who

who will run all risks, *when ready money can be had.* Were it possible to detect and to prosecute to conviction, the receivers of stolen property, we should at once destroy the root of most of the crimes that are committed. On this subject, COLQUHOUN, who was well qualified to judge, has the following observation : "One of the "principal causes of crimes may be traced "to the existence of receivers of stolen pro-"perty; for, without that encouragement "which receivers hold out, by administer-"ing immediately to the wants of crimi-"nals, the thief, the robber, and the bur-"glar, could not, in fact, carry on their "trade."

This crime, like most others, can be checked in two ways, by preventive measures, and by exemplary punishment. And as in every case preventive measures are preferable, we ought to direct our attention to them. For "punishment only prevents the

"fatal

"fatal effects of private interest and pas-"sion," without removing the cause; "but "preventive measures fetter the cause, and "impede its operation." And, in the first place, We ought to discover who the receivers are; secondly, How they are to be convicted; and, lastly, How they are to be punished.

In England, the receivers of stolen property are almost wholly confined to two descriptions of persons, viz. pawn-brokers, and the dealers in rags, metals, &c, In India, the case is different. The receivers are men of all ranks and descriptions; but the most common are these,—smiths, jewellers, braziers, washermen, keepers of wine-shops, and what are called *judgemaun Brahmins*, or those who receive presents in goods, as a remuneration for the performance of religious ceremonies. These classes are the great receivers, and the reason is plain why they are so. The trades of the smiths, jewellers,

braziers, and washermen, admit of their having a quantity of iron, gold, silver, and brass articles, and clothes, without subjecting them to suspicion, and these they can make up, melt, sell or exchange, with great facility.

If we can convict these, it will not be difficult to trace the lesser dealers, who collect in small quantities, and bring in to these great receivers. Of these small collectors there are few, the *Dacoits* generally arranging matters with some of the grand receivers previous to the commission of a robbery. But these grand receivers are not always, or even often, disposers of the stolen property by sale. There are above them a class of men whom we should not be inclined to suspect, but who, as has been proved beyond a doubt, are receivers. I allude to the upstart petty landholders. Where we find that these men have risen suddenly into affluence, without having the ostensible means,

means, we may justly suspect, and keep a watch over them. These men having received large quantities of stolen property, either re-manufactured, or brushed up and cleaned by the smiths, jewellers, and braziers, employ agents, who are called *Pykars* or *Gushtwallas*, and these pedlars carry the property from the district in which it is stolen, and dispose of it at the *hauts*, fairs, and in the villages of the neighbouring and of distant districts. In this most lucrative traffic, the *Gomasthas*, *Mundils* and *Paiks* of the villages are often engaged, and detection, where the interests of all are concerned, becomes very difficult.

In the discovery of such receivers, who, from the extent of their power in the villages, will suppress every means of information, the employment of *Goindas* alone will be found effectual. But until their information wears an appearance of strong probability, or is confirmed from other circumstances,

cumstances, it ought not to be acted upon; and wherever it proves unfounded, the *Goindas* ought to be severely punished. The warrant granted should in all cases be for the search of one house only, and not, as is too often the case, *a roving commission, permitting the bearer to search the houses of any one in the village.* These *Goindas* have always three methods of making money, viz. by the rewards they receive from the Magistrates for the apprehension of criminals,—by the rewards they receive from criminals, for conniving at their offences, —and by the money they can at all times collect from their power in the villages. Let it always be kept in mind, that where one of these sources becomes more fertile than the others, the *Goindas* will draw their gains from it. We must, therefore, make the rewards allowed them for apprehension very liberal, and not be too severe on them when they may be found levying money. Unless a *Goinda* is an object of ter-

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ror in a village, he will not be a check upon offenders. But let it not be imagined, that I am an advocate for never punishing *Goindas.* This practice I have seen more than once publicly defended; but I know at the same time, that the *Goindas* under such management are the scourge of the districts in which they were employed; and I also know, that occasional punishment by others has been attended with excellent effect, in restraining the *Goindas*, and has not by any means rendered them less efficient as instruments of police.

The second method for the discovery of receivers, is a careful examination of the records of the *Kutcherry* in the *Zillah* where you are stationed. This may be done by the officers of your Court, in the following manner. The trials for *Dacoity*, burglary and theft, must be carefully examined for several years back, and an alphabetical

phabetical list made out, shewing the names of the receivers mentioned in each trial, their profession, the names of their villages, the number of witnesses proving their guilt, and a column must be left for occasional observations. The list will then be thus drawn up.

Names of Receivers.	Their Trades.	Names of their villages.	How convicted.	Observations.
Anundram	A smith,	Kissengunge	By 4 witnesses.	The crime fully proved, and property found.
Burkutoola	A washerman,	Beerpore	By his own confession.	Property disposed of.

On the occurrence of any theft, we shall then have recourse to the village, and we shall find whom to suspect and watch over. The names of the villages ought to be arranged in alphabetical order.

The third and most effectual means of discovering receivers, is from the evidence

or

or confession of thieves; and that there are times when it becomes necessary to make use of criminals, and to pardon them, for their information, no Indian Magistrate will doubt; but in this case, as in all others where the information of accomplices is used, their pardon ought to be the consequence of a general law passed in favour of all accomplices, not of a special declaration in any particular case. For this, as BECCARIA observes, "prevents the "union of villainy;" and it alone allows of a criminal's putting implicit confidence in the Magistrate, who cannot break the law, by afterwards punishing criminals.*

 Nor

* Government have, since the writing of this, by Regulation I. of 1811, sanctioned the pardon of individuals convicting their receivers. But unfortunately, they have made a previous reference to the *Sudder* Court necessary: this causes delay, and diminishes

Nor is this inconsistent with the practice in England; for, if it is excusable to admit of King's evidence for the conviction of principals, it may surely be sanctioned were it affects the conviction of the receivers, who, although they are generally punished only as accomplices, are, in reality, worse than principals.

The evidence and confession of prisoners is, however, only to be relied on where they are pardoned, and made attendants on the Magistrate, or where their pardon is to be the consequence of their convicting receivers. In many instances, I have seen confessions taken with every precaution,—confessions taken under the gallows, which have proved false and malicious. It is customary for thieves and robbers to implicate in

nishes the confidence which the offers of immediate pardon, as his own act, by the Magistrate, would inspire.

in these confessions all persons with whom they are at enmity, who may have appeared against them as witnesses, or who may have assisted in their apprehension. It is one of the first principles in the formation of a gang of *Dacoits, that all informers, witnesses, or police officers, should be punished, who shall dare to interfere in their operations.* And this punishment is effected by the members of the gang, by cutting the throats of the obnoxious persons, or by implicating them in their confessions, and bringing them into trouble.

The consequences of a man's being apprehended on suspicion, are very different in India from what they are in England.—In England, the apprehension of a man on a criminal charge (for alas, it is different with the debtor!) subjects him only to the slight ignominy attending on suspicion, and to a speedy examination before a Magistrate,

trate, where, if the charges prove unfounded, he is immediately released.—In India, the first and inevitable consequence of a man's being apprehended, is the loss of all his property. Of this I am well convinced from actual observation, and from the information of the peasants themselves. Their little property is either carried away by the police-officers, by the *Goindas*, or by their rapacious creditors. The next consequence is a long confinement; for in a *Zillah* where *Dacoity* and theft have gained a footing, the jail of the Magistrate is soon filled, and the number of convicts under examination becomes so great, that a trial seldom commences till after the accused has been above a month in confinement. After he is brought up for examination, a long period elapses before all the prosecutors, witnesses, &c. are collected; these last can only be examined as they come, dropping in one by one; and it is often the object of the Police,

or

or of the *Zemindars*, to join with the *Dacoits*, in effecting the conviction, or at least the long imprisonment of innocent men who may be obnoxious to them.

Having made these observations on the methods of discovering receivers, I come now to notice the means for their conviction, and the nature and extent of their punishment.

With regard to the means for their conviction, these will not be found to differ from the common means used for the conviction of other criminals, namely the evidence of witnesses. But we shall here find the employment of *Goindas* very necessary in obtaining proof against these offenders, and in selecting the proper witnesses who shall effect their conviction.

On the subject of the punishment of this crime there are many and various opinions;

but certainly, a very great change might be expected, were a more severe punishment, extending in aggravated cases even to death, inflicted for *thangee daree*, or receiving or purchasing stolen property. It stands to reason, that unless there existed receivers of stolen goods, robbery and theft could not be carried on to any great extent. The change, indeed, would be attended with disadvantage to pawnbrokers, for poor people, in times of necessity and scarcity, are often reduced to sell their property, to enable them to live. And these might suffer, if people were deterred entirely from purchasing by the severity of the law. To do away this, there might be established pawnbrokers, who should be invested with written *pottahs* or licences from Government, (as is the case with *Soorees*). These men might be held responsible by securities for their conduct, their shops permitted to be open only during the day, and suffered to purchase at a certain *niric* (or fixed rate).

It would be a very lucrative trade, and those who had it, would take care that no unlicensed persons should be permitted to exercise it. It would add to the revenue of Government. The pawnbrokers might be made very useful instruments in the detection of thieves; and if, from the circumstance of its spoiling their trade, they did not inform, we might place spies round their houses.

I have hinted, that the punishment of death might in some instances be inflicted for this crime; but this should be only in the most aggravated cases, and on notorious and incorrigible offenders. I am by no means an advocate for the increase of capital punishments, and am convinced that the extension of the punishment of death to lesser crimes has had the worst effect in England. By its frequency, it has lost its former terrific effect. And the previous

knowledge, that information will subject the offender to a capital punishment, must always operate in preventing individuals from giving that information. Thus crimes are concealed and multiplied; the thieves arguing with themselves, that no humane man will, for the loss of a few shillings, take away another man's life, however just it might be.

But surely, if the doctrine can be defended by which a man loses his life for stealing, under a variety of circumstances, property above twelvepence, how much more does *he* deserve capital punishment, who is not only the encourager, but the creator of thieves? An idea, that the sole end of punishment is to deter from guilt, often leads us astray, and induces us to be more severe than we otherwise should be. But we ought to reflect, that were a punishment does not bear a proportion to the

crime

crime committed, it will excite pity for the criminal, not hatred against him. The speech of Lord Mansfield to a criminal is in every one's mouth: "Thou art not "hanged for sheep-stealing, but that sheep "may not be stolen." This doctrine, however, is not altogether sound; for that retaliation which every unbiassed person must feel, to be allowable to the party injured, and a due proportion of this retaliatory punishment to the quality of the crime committed, is certainly a great object to be attended to, and by one for whose opinions I must have the highest veneration, has been laid down as the first principle to be followed in the formation of every Criminal Code.*

Too

* See this doctrine defended in Lord WOODHOUSELEE's *Memoirs of the Life of Lord* KAMES, page 110. vol. ii. (Appendix to vol. i. 2d edition.)

Too much cannot be said on the importance of an increase of the punishment on the receivers of stolen property, in all aggravated cases. We may see how much the attention of the English Legislature has been directed to this subject. Previous to the present laws, the existing regulations for the punishment of this crime were found insufficient. The punishment was increased, and the law amplified and improved, by the 5th of Anne, chap. 31.; by the 29th of Geo. II. chap. 30.; by the 30th of Geo. II. chap. 29.; by the 10th of Geo. III. chap. 48.; and by the 22d of Geo. III chap. 28.*

In these acts, especially the latter ones, the crime is embraced in all its branches. The principal innovations in these acts are as follows: That the punishment of death may, in the event of the felony being proved,

* See Colquhoun's *Police of the Metropolis.*

ved, be inflicted on the receivers of stolen property: That the purchasing of it at an under rate shall be deemed a sufficient evidence of the things having been stolen; and the punishment on conviction in these cases shall be fourteen years transportation: That any one Justice shall have the power of examining houses and seizing suspected persons: That, even if the crime is not proved, the informer shall be indemnified: That the actual thief, if the crime is within benefit of clergy, shall be pardoned on convicting two receivers, provided the criminal be under fifteen years of age: That any one to whom goods may be offered for sale, if he suspect the person offering them, may apprehend him, and carry him before a Magistrate, and shall be indemnified, if the crime is not proved.

Were pawnbrokers, then, established with licences, were thieves occasionally pardoned on convicting receivers, and were rewards

wards to be given to those, not thieves, who shall give information, we might soon expect a diminution of this crime, and consequently of robbery, burglary and theft.

Blackstone, in his Commentaries on the Laws of England, has the following observation on the subject: "The general rule "in the ancient law, in regard to the crime "of receiving stolen property, is, that the "accessories shall suffer the same punish-"ment as the principals; and if the one "be liable to death, the other shall be so "also."

In France, so celebrated for its Police previous to the Revolution, this crime was punished with death.

In India, where false complaint is so common, and where the natives are not public spirited enough to give information for the common good, but often give it to serve their

their private ends, perhaps it might be improper to put in force that law which indemnifies the prosecutor, in the event of his not proving his complaint. But a pardon might, with much good effect, be granted to thieves of any age, whose cases are not peculiarly aggravated, on their conviction of one or more notorious receivers. And this power of pardoning, and making use of the information of criminals, ought to be granted to the Magistrates without a reference; for natives will not put faith in the Magistrates, while they can only tell them that they will do their utmost to obtain a pardon for them. The Magistrates cannot make a bad use of this power; and it is merely a European idea, that Indian Magistrates should not have the power of pardoning great crimes. In India, where the Magistrates have not this power allowed them, they assume it, and with the best effect. The wide principles which form the basis of English law can alone be followed in India. The particular methods

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in convicting, trying and punishing offenders must be ever dictated by the local circumstances of the country, and by the manners, habits, and prevailing crimes among its inhabitants.

I have been the more particular on the subject of receivers, because I am convinced that it is the object most worthy a Magistrate's attention. It is the most lucrative of all trades, and in it combinations are extensive and powerful.

The number of shops for receiving of stolen property in reality, though outwardly for the sale of rags, old iron, &c. increased in London, in twenty years, from three hundred to three thousand. This fact is mentioned in COLQUHOUN'S Work, and from this it may be imagined, how very profitable the trade is, and how worthy the attention of an efficient Police.

I shall

I shall now proceed with the next cause of the increase of crimes: "The allowing "felons and others who may have escaped "from jail, or who have been proclaimed "or summoned on former trials, to remain "at large in the different *Zillahs*; which "descriptions of persons being under the "perpetual fear of a discovery, must skulk "about the country, and live by their wits, "as vagabonds, who, by an easy transition, "become thieves and *Dacoits*."

The power of this cause is so obvious, that very few observations will detain us in treating of it.

In almost every trial, from the corruption of the *Darogas*, or heads of police departments, the connivance of the *Goindas*, and the various combinations of the *Zemindars*, as well as from the skill of the criminals, there remain a great many members of the gang

gang who escape; yet the names of these appear on the face of the proceedings, either as actually accused, and perhaps convicted of having committed the crime, or at least suspected. The practice is to summon, or more commonly to proclaim these men. And from the day that an unfortunate wretch is thus proscribed, he has to avoid his *Zemindar*, the *Daroga*, the *Goindas*, and even the *Paiks*, *Mundils* and his fellow villagers. He is become an object for general pillage. Every one has it in his power to say to him, "Pay me so much, otherwise I will send you "in to the Magistrate." From what source can he obtain money to supply the urgent demands of these well-wishers of the public peace, and at the same time support himself and family? An open trade he cannot exercise, for then he would be daily exposed. Besides this, no open trade can supply both his own wants and those of others. He becomes then, from necessity, a thief and

a robber. Innocent perhaps of the crime for which he was first summoned, he at last makes his appearance before the Magistrate, loaded with crimes, to which he has been reduced by the rapacity of those very men whom we look upon as the preservers of the public peace.

By sending him in when he can no longer pay, these men gain many ends. They preserve the terror of their name in the villages, by shewing what they can do. They preserve their credit with Government, by sending in *the now notorious and hardened offender*. They receive one more reward for the apprehension of that man whose sins they have, with most Christian piety, pardoned seventy times seven. The character of JONATHAN WILD is to be found in every *Daroga*, every *Goinda*, and among many other descriptions of persons in India.

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There are not wanting instances of criminals, who, driven to despair by such a situation, have come in and solicited a trial and acquittal, or even a severe punishment for their crimes. It becomes, therefore, a most important object with a Magistrate, on entering a bad district, to employ his officers in making out a list of those persons, of a similar nature with that given a little before for the discovery of receivers. And after each prisoner has been tried, if acquitted, he ought to be furnished in every case with a copy of his acquittal, under the seal of the Court. An order ought to be issued to the *Daroga*, apprizing him of the man's acquittal; cautioning him against sending him in again on slight grounds, or levying money from him. The prisoners should be cautioned against paying such requisitions to any one, and the *Daroga* ought to publish in writing his acquittal throughout the village.

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The man may then return in happiness to his village, and follow his profession in peace: he may be restored to that portion of esteem which he has a right to expect from others,—to the consideration of his own family, and his fellow villagers, without which no one can be happy. His labour and industry may again contribute to the good of the society whom he otherwise would daily injure,—and, what is of much importance, he will furnish an example, that justice may be obtained in our Courts, even when its course is impeded by the exertions of the weighty and the powerful. A confidence in our Courts may in time induce the innocent always to come forward, and even the guilty, at times, to solicit a milder punishment from their judges, instead of a continued and cruel punishment which their fellow villagers inflicted on them.

Let it also be remembered, that the trial and conviction, or acquittal, of persons of this last description, ought to be immediate,

and that other business, and the trial of fresh offenders, ought to be postponed to it; otherwise we shall create two evils. Few will deliver themselves up to a long confinement previous to their trial, and the long confinement will of itself be construed into a punishment by the ignorant multitude, or by the designing *Zemindar*.

Let us also very carefully provide, that neither in prison, by a mixture with the depraved, nor, after his acquittal, by the tyranny of his *Zemindar*, the accused be stigmatized. "A person (says BECCARIA) who "is accused, tried and acquitted, ought "surely to be branded with no degree of "infamy. Among the Romans, we see "that many accused of very great crimes, "and afterwards declared innocent, were "respected by the people, and honoured "with employments in the state. But why "is the fate of an innocent person so different in this age?" Among other reasons,

sons, some of which cannot apply to the state of criminal jurisprudence, even in India, he gives the two following, which are applicable, and very just: "It is (says he) "because the accused and convicted are "thrown indiscriminately into one prison. "It is because the imprisonment is rather "a punishment than a means of securing "the person of the accused." This is a great defect of our Indian prisons. But I have devoted a separate chapter, in another part of this Essay, exclusively to the consideration of the subject of Prisons.

The next cause, "the want of employ-"ment for discharged prisoners, common-"ly called *Daghees*, or branded persons," is so intimately connected with the last cause, that almost the same arguments and reasoning will apply to both. But there is yet a difference, and a material one, between the situation of an *Ishteharee*, or a

proclaimed person, and a *Daghee*;—so great a difference, that the one may be innocent, the other has been proved guilty; —the one has never been a *jail-bird*, according to the technical term; but the other has suffered the hardening ignominy of a *jail*, has contracted habits of idleness, inseparable from a prison, and has learned new vices under the most skilful masters. If the first of these, the proclaimed person, has been proved a dangerous member of society, what must we think of the last! Let us attempt to describe his situation.

He has, in the first place, suffered an imprisonment previous to his trial. He has been taught by the old offenders to attempt bribing the witnesses, and the officers of the Court. He is brought to trial and found guilty; his punishment, we shall say, is the *corah* or Mussulman whip, and seven years imprisonment (a light punishment for *Dacoity*). The marks of the *corah* are peculiar

and

and indelible. They are known to every one he meets. He is now sent among a hundred or more felons, to work in irons, on the public roads; he becomes an object of pity to very few, of contempt and indignation to many. But time hardens him, and in time he sings his song, smokes his *hookah*, and is only roused to work by the cane of the guard. In jail, his time is passed in eating, smoking, and sleeping, all of which he enjoys even with more facility than he could if a labourer or common tradesman. He listens at first, and afterwards joins in applause, at the tales of old offenders, their "hair-breadth 'scapes;" "their dangers in the deadly breach" of their prison walls; their revenge on *Goindas* and police-officers. He has, in the mean time, lost all his property: His family are either starved, or have followed the example of their head, and have become thieves, waiting for the time when he shall join them in iniquity. They seldom wait in vain.

vain. He has, perhaps, lost cast by intermixing or feeding with others, or by a connection with unhappy creatures who are always found ready for prostitution, inside or out of the walls of a jail; and, lastly, his character is gone, and no one will give him bread.

In India, there are at present but two courses which a man under these circumstances, or a proclaimed person, can pursue. The first, and most common, is that of joining a gang of thieves or robbers: The second is that of flying to a large town, and following the profession of a *coolly* or a carrier of burdens. At the wharfs, and in the warehouses of merchants, as well as at the building of houses, or large public works, a great number of these *coollies* is always in demand; and we shall find, that in these places criminals are very often traced and apprehended by the assistance of spies.

There

There are two methods which present themselves for removing this serious evil. The one is, by making over, formally, all released prisoners to their *Zemindars*, and insisting on their finding work for them, and keeping a watch over their actions. The other method is, by the establishment of penitentiary houses, or work-houses, of such a nature, that those who are released may find subsistence for themselves. Such establishments in the large towns in India might be very useful to the public. But as this plan is, from the idea of expence, not a favourite one with any Government, I will not enter into a detail of particulars respecting the management of such an institution.

A very excellent plan for the establishment of penitentiary houses will be found detailed by Mr. BENTHAM, in COLQUHOUN'S Police of the Metropolis.

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The first plan may be adopted by any Magistrate. But it would be well that Government openly sanctioned it. I have seen it done with good effect by a Magistrate, solely on his own responsibility. In fact, an Indian Magistrate, if tied by laws and regulations, and fettered by the necessity of continual reference to higher authorities, cannot act with effect. Reference is tedious, and time is never to be lost in arrangements for police.*

CHAP.

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* All the observations in this Chapter on the subject of receivers of stolen property, were written long previous to the publication of Regulation First of 1811. That excellent regulation, the substance of which was, I believe, suggested by Mr. BAYLEY, the Magistrate of Burdwan, has embraced many of the abuses here mentioned; but much yet remains to be done.

MAHARAJA SERFOGI'S SA... THE TANJORE ...I MAHAL.

CHAP. V.

CONTINUATION OF THE CAUSES OF DELINQUENCY,—EVILS OF THE *MAHAJUNY* SYSTEM IN SOME PARTS OF THE COUNTRY.—RESUMPTION OF THE LANDS OF *PAICKS*, *CHOKEDARS*, AND OTHER WATCHMEN.—THE BAD FOOTING ON WHICH THIS ESTABLISHMENT IS PLACED, AND THE WELL KNOWN CONNIVANCE OF THE WATCHMEN WITH *DACOITS* AND THIEVES.—WANT OF A FUND FOR REWARDS.—WANT OF A MORE GENERAL USE OF THE *GOINDA* SYSTEM (OR ESPIONAGE,) UNDER LIMITATIONS AND RESTRICTIONS.

IT was necessary to mention the abuses of the *Mahajuns* as one cause of delinquency, in many parts of the country; because, where these abuses are practised, they form a cause

a cause of considerable magnitude; but I do not concur in the general opinion, that the *Mahajuns* are universally tyrannical and oppressive.

This subject has been fully treated in the Chapter on the Oppression of the *Zemindars;* and it will not be necessary in this place, to add any thing to the observations there made, unless indeed to recommend, that wherever the system may have been abused, the plan formerly suggested for the redress of the petty complaints of the *Ryots* should be adopted, namely, by sending the assistants into the villages. The examination of the books of the *Mahajuns*, and the punishment of a few of the most oppressive, will have a very proper effect in deterring others.

I have heard, that in the village of Tipperah, Mr. ELIOT, Magistrate of that *Zillah*, made an attempt to separate the *Ryots* from

from their *Mahajuns*, and to teach them the means of supporting themselves without their assistance. The attempt was attended with considerable success; and it is most desirable, that the Magistrates should unite in doing away this evil. A little patient perseverance would overcome their prejudices; and if once convinced of the actual gain arising from their own independent exertion, they would not again relapse into their former bad habits. They were formerly, under their own government, so ill protected from the ravages of the *Dacoits*, and of their *Zemindars*, that they were afraid to amass any little store for the evil day; it only marked them as victims for the *Dacoits*, or as fit subjects for the extortion of the officers employed in collecting the revenue. And long habits of evasion, of cunning, and of useless extravagance in getting rid of their gains, have effected a change in their dispositions, and made them cautious in trusting any one. This disposition

tion will ever render any improvement in their condition a work of much difficulty; but let us not despair. The habits of the natives of Bengal, like those of all other nations, may be changed, although there is no other people among whom change is so difficult and tedious a work. The reason of this is plain; their government, their laws, their manners, their dress, their food are all made to depend, or have an intimate connection with their religion; and to make innovations in these, they consider as war against God. In this belief they are kept and encouraged by the Priests, who form the most powerful body in a Hindoo State.

On the subject of the next cause of delinquency, it will be necessary to be a little more full and particular. When well arranged, and kept under proper restraint, the *Paicks*, *Chokedars*, and other watchmen, form, perhaps, the best instruments in the hands of a Magistrate. But, according to the

the present plan, they are almost universally the abettors and assistants in robbery and theft.

There is, perhaps, no country where watchmen are generally supposed to be above the reach of a bribe; it can scarcely be expected from their low birth, and their general acquaintance with vice in all shapes. It therefore becomes necessary that we should make use of the ruling passion; that we should make the apprehension of criminals, more than the connivance of their crimes, a source of gain to them. This is the chief end which a Magistrate ought to have in view in the management of his watchmen; till he has done this, the watchmen will not be of the smallest benefit to him.

It will, therefore, be well to enquire how this is to be effected.

Under the native governments, and, indeed, until we gave such unlimited power to the *Zemindars* over their lands, the watchmen were possessed of small pieces of ground, which they had instead of pay. Their gains from this source, added to the sums which, either by fair or foul means, they could levy from the *Ryots*, supported them in comfort, and the watchmen were among the best provided in the village. They had a name, and were consequently possessed of some little power. Their lands have of late years, with a very few exceptions, been resumed by the *Zemindars*; they are paid but scantily, if at all, and they now subsist by conniving at, or joining in, the depredations of the *Dacoits*. Few young healthy men, who are capable of gaining their bread in any other way, will accept of the office, and it is filled throughout the country by old decrepit men, or by abandoned thieves and robbers. There is a rea-

son

son for this. The *Zemindars* are no longer allowed to interfere in the police of the country, and all responsibility is taken from them. Formerly they were made to account for the property lost, and this they could only effect by maintaining a well organised and efficient body of watchmen; but this is no longer necessary, and the office is given to those who are content to have it without the land formerly given, and who trust to their wits for their livelihood.

There is yet another reason why this class of men have become useless, and that is that we look to the *Darogas* only on the occurrence of a robbery. It was not so with the *Zemindars*, who are every way fitted to give us a lesson in police. When a robbery took place, they sent for the *Paicks* and *Chokedars* of the village; if the lost property was forthcoming, all was well, if not, they were severely flogged, or turned out of their places, or both. This was a summary pro- ceeding:

ceeding: it was completely an Eastern proceeding; but it was successful when duly enforced.

This method has been tried with the greatest success by the present Magistrate of Burdwan (Mr. Bayley). He adopted it, as he did many other excellent devices, entirely at his own risk. He was blamed by the Court of Circuit; but in his defence, he directed the attention of Government to the state of his *Zillah;* and, in consequence of this, a sort of half-measure was adopted by Government, who sanctioned the corporal punishment of watchmen, *where the crime was duly proved.* I most strongly recommend to all Magistrates, to exceed the bounds of this regulation, and in every case where even strong suspicion attaches to the conduct of the watchmen, to flog them soundly.

But

But the grand questions on this subject are, What sort of people to employ, and how to make their situation sufficiently lucrative, to put them above connivance with criminals? If Government will sanction the giving of very high rewards, and will also permit the watchmen to enjoy some power in the villages, and will order the Magistrates not to be over scrupulous in taking up petty complaints against them for extortion, they may then, with safety and success, employ thieves and robbers for watchmen. If they will not follow this method, they ought to select young healthy respectable peasants,* and give them a liberal salary, punishing every instance of extortion, and turning them out in a summary manner.

* The fault of selecting old men for the situation of watchmen, is very common. Mr. Colquhoun, in his *Police of the Metropolis*, complains of this error. To this is generally ascribed the bad state of police in Scotland, which has lately called forth the attention of the Government there.

The

ner. The office will, if lucrative, be always well filled. The *Chokedar* ought always to be selected by the villagers themselves, not either by the *Darogu* or the *Zemindar*, as is at

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The aged watchmen, whom we see in India, have often put me in mind of DOGBERRY's admirable speech to his friend VERGES:

"Well, for your favour, Sir, why, give God thanks, and make no boast of it; and for your writing and reading, let that appear when there is no need of such vanity. You are thought here to be the most senseless and fit man for the constable of the watch, therefore bear you the lanthorn; this is your charge: you shall comprehend all vagrom men, you are to bid any man stand in the Prince's name.

2 *Watch.* How if he will not stand?

Dogb. Why then take no note of him, but let him go, and presently call the rest of the watch together, and thank God you are rid of a knave.

2 *Watch.* If we know him to be a thief, shall we not lay hands on him?

Dogb. Truly by your office you may; but I think they that touch pitch will be defil'd: the most peaceable way for you, if you do take a thief, is to let him shew himself what he is, and steal out of your company."—

at present the case. He should be well armed, but have no badge of office, which is merely an instrument of extortion.

With regard to his salary, it should be ample. He should have his piece of ground, and the Magistrate should be cautious in not taking up every petty complaint made against him for extortion or oppression, when the man at the same time does his duty. He ought to have a liberal reward on the apprehension of criminals ; also for fighting, wounding, or killing any members of a gang, while engaged in robbery, or in apprehending them ; also a per-centage on all property recovered, *which property shall be proved to have been robbed or stolen.* The allowing a per-centage on all property found, leaves much room for abuse, as the watchmen might then follow the plan of JONATHAN WILD, and not only be in union with the thieves, but instigate them to com-

mit robbery and theft, being in every way gainers.

Whenever a Magistrate shall discover any connivance between a *Chokedar* or other watchman and the *Dacoits*, let him set about his conviction in the most secret manner, by employing *Goindas*, and by using the exertions of those who may wish to have the situation. Let him obtain the witnesses, and the proofs of his guilt, and when all is ready, let him be brought to trial. If he succeeds in convicting him, the punishment ought to be inflicted in the village, and the terror of the example will spread far and near. If he fails in convicting him, it would be well that he never had attempted it, for it will only shew his weakness; and I would therefore recommend to Magistrates, seldom to make over watchmen to the Court of Circuit, but rather to flog them well, and dismiss them from their offices. A watchman who has obtained the support of the

Court

Court of Circuit, and who is re-instated in his office, is immediately arrogant, useless, and corrupt.

On entering a *Zillah*, the Magistrate ought by degrees to summon the watchmen before him, or, by deputing his assistants into the interior, he ought to make the watchmen aware of what he would expect of them,—to tell them what rewards and what punishments they should receive,—to register their names, suitably providing for them if they have been deserving,—to turn out old and infirm men, and to supply their places by young, bold and active, fellows. The villagers ought also to be told what was expected of them, namely, that they should join with the watchmen in opposition to the *Dacoits*; and examples ought to be held out to them of those villagers in other districts who had successfully combated with these cowards. The Magistrate ought occasionally to promote to the situation of a

Burkundauze, of *thannah*, &c. those *Chokadars* who have been brave and active.

Watchmen in India must be well armed. This is not so necessary in England; for there thieves are seldom armed, and are easily terrified: but here *Dacoity* is conducted by large bodies of armed men. Even the *Sindeal* or house-breaker, when attacked, often defends himself with his *sind* or knife. The being armed also attaches a degree of power and terror to the occupation, and among the natives this is very necessary.

Watchmen should never be suffered, as they do at present all over India, to roar out every hour or two, and thus let the thieves know where they are. But, in order that they may watch well during the night, they should not exercise an active trade or profession during the day. So very desirable is it that the general union of

of thieves and watchmen should be checked, that I would recommend the giving a pardon to such thieves as should convict the watchmen of having joined with the *Dacoits*, or in any way partaken of the booty.

On this subject I have nothing more to say. The defects of the present plan are but too generally known, and call loudly for a remedy.

The next cause which I have mentioned, is the "want of a fund for rewards." This want is very generally felt by the Magistrates in Bengal; and it will only be necessary to suggest means for the establishment of such a fund. At present, when a Magistrate wishes to reward an informer, a watchman, or any other person, who may have been active in the apprehension of criminals, he must either do it from his own private purse, (a thing by no means uncommon), or he must commence a long and tedious correspondence with Government,

ment, through the *Sudder* Court, and by the time that the services of the person are forgot in his own village, he receives from the Magistrate his reward. Besides which the Magistrate is, in every case, a better judge of the extent to which the reward should be given, than Government can be; and Government have enough to do without listening to a discussion on the merits of *Goindas* and others.

The methods I would suggest for establishing a fund for rewards are two, either of which might very easily be carried into execution. The one is this, That a small tax should be levied on the *Zemindars* of each *Zillah*. It would fall very lightly on the *Zemindars*, where they are numerous: And where a few *Zemindars* have all the land, their wealth would prevent their feeling so small a burden. The proceeds of this tax ought either to be vested in the hands of the Magistrate, or of the Collector,

Collector, who shall annually give an account of the expenditure.

The other method would be by making punishment by pecuniary fines for certain offences more common than it is at present, particularly the harbouring of *Dacoits* by the *Zemindars*. There would thus be a connection between the crime committed and the nature of the punishment; and the very money levied from the *Zemindars*, would often go towards rewarding those who should inform against them.

Rewards in money and land, and in promotion, are attended with much benefit among the natives, who are extremely greedy; and where such rewards are not given by government, they will seek for them from the *Dacoits*. Besides rewards to persons of the description above mentioned, every Magistrate should have a series of much

higher

higher rewards, founded on promotion in his office, and which he should from time to time distribute, according to the merits of his officers. There ought to be a gradual rise in every office, for the members of that office alone; and strangers should never be allowed admission, unless to the lowest ranks, and when the lowest ranks are promoted in their turn. In the *thannahs* this system of gradual promotion ought also to be made general. Active *Burkundauzes* should be promoted to the situations of *Jemmadars*, *Jemmadars* to the place of *Darogas*.

On the subject of the next cause, viz. "the want of a more general use of *Goindas* or spies, under certain limitations and "restrictions," it will be necessary to dwell a little longer than on most of the following causes; because on this subject the opinions of our Indian Judges and Magistrates

strates are as yet undecided; and because it is a subject which has excited general interest, and is certainly of importance.

There is something in the European character, which revolts and shudders at the idea of employing spies and informers. When the very names of these people are mentioned, we think of the French Revolution. We look back to the days of Titus Oates. We remember the state of Ireland, as eloquently described by Mr. CURRAN. The characters which a European naturally gives of an informer are these: "Miscre-
"ants, who avow that they have come from
"the seat of Government, where they had
"been worked on by the fear of death, and
"the hopes of compensation, to give evi-
"dence against their fellows:"—"Wretches
"who, buried as men, lie till their hearts
"have time to fester and dissolve, and who
"are then dug up as witnesses; whose
"voices warn the devoted wretch of woe

"and

"and death;—death, which no innocence "can escape,—no art elude,—no force re- "sist,—no antidote prevent."*

"A mercenary informer knows no dis- "tinction, under such a system; the ob- "noxious are slaves, not to Government "only, but to every individual; they are "slaves of the whole community, and of "every part of it; and the worst and most "unmerciful men are those on whose good- "ness they most depend. In this situa- "tion, men not only shrink from the frown "of a stern Magistrate, but are obliged to "fly from their very species. The seeds of "destruction are sown in civil intercourse, "and in social habitudes. The blood of "wholesome kindred is infected. Their "tables and beds are surrounded with "snares."†

"It

* Mr. Curran's "Speeches."

† Mr. Burke.

"If he who associates with robbers, who
" deposed and accepted a trust, and whose
" guilt is a pledge of his fidelity, should be-
" tray his associates for hire; if he is urged
" to secure them by the anxiety of suspi-
" cion, or the terrors of cowardice, or to
" punish others by the importunity of re-
" sentment or revenge; though the public
" receives benefit from his conduct, and
" may think it expedient to reward him;
" yet he has only added to every other
" species of guilt, that of treachery to his
" friends: he has demonstrated, that he is
" so destitute of virtue, as not even to pos-
" sess those vices which resemble it, and
" that he ought to be cut off as totally un-
" fit for human society."*

These opinions do honour to the human heart; they are peculiarly calculated to fascinate Europeans; they are delightful to the

* Dr. HAWKESWORTH.

the subjects of an English Government. But we must sacrifice a few of these our better feelings, when we come among a set of men, who, as Lord WELLESLEY most judiciously remarks, "entertain no attach-"ment to any system of political principles, "or to any form of government:"* Who, from time immemorial, have been ruled by a rod of iron, and have contracted habits of cunning and duplicity in proportion to the tyranny and oppression exercised over them; who want all the unsuspecting openness of the European, and more particularly the British character, and who, from fear or corruption, will not come forward against criminals.

Let us also reflect, that there is a wide difference between the class of men described in the above quotations, and the *Go-*

indas

* See his Letter of July 1804 to the Madras Government, on the subject of the new form of government.

indas of India. The one are the spies of a government, kept often to effect the ruin of men obnoxious to their political views; the others, (the *Goindas*), are the spies of a Magistrate, employed merely in matters connected with the police, and in the apprehension of criminals.

I would also premise, that in India there are two distinct kinds of *Goindas*; and that, as I would allow the character above given, or even a worse, to be a fair picture of the first class, yet I would sanction, and even recommend the employment of the second description.

The first are, the professional and established *Goindas* of India. The second are the occasional and temporary spies of an active Magistrate.

The plan adopted by the professional

Goinda is nearly the following: When he settles in a village, by mixing at first with all the unsuspecting villagers, he gets the names of the suspicious characters among them, and acquires as much information as he can regarding their lives and actions. This is his first step. In the event of a robbery taking place, he goes to the house of the person robbed, and, affecting to take the whole responsibility on himself, he induces the person to declare the circumstances of the robbery.

A native of any cast or respectability would, at all times, rather submit to being robbed, than come to Court, to stand as prosecutor, or take an oath, which shall, perhaps, either cost him a large sum of money, or occasion the loss of cast, and to be pillaged by the *Aumilah* of the Court. He is, therefore, happy to give the whole charge and responsibility to the *Goinda*. He saves himself from

from the revenge of the *Dacoits*, which, if they are acquitted, falls on the *Goinda*. If the person robbed knew any of the robbers, (a thing almost impossible, though sworn to every day,*) the *Goinda* gets their names; when,

* This is a fact well known among the natives. I had it, as I had most of my information on the subject of *Goindas*, from a number of that description, whom I accompanied during the night, from Kishnagur, into *Zillah* Nattore, in the apprehension of a notorious member of their gang. We travelled all night, and I amused myself by hearing the accounts of the *dacoities* they had committed. On our arrival at the destined place, as it was still dark, I made them go through all the forms of a regular *dacoity*. We had been informed, that the man to be apprehended was a *very desperate character, and would certainly fight*. I was not a little alarmed; but how great was my surprise when the warrior appeared: A poor, weak, trembling creature, scarcely able to crawl from fear. The character of the Bengalee differs in this respect from that of most nations. When put into a desperate situation, instead of becoming desperate, they lose all energy. They are cruel, but not brave; they will murder by stratagem and when secure from opposition, but will never fight.

when, from the circumstance of their being recognised, and their being notoriously bad characters, he is pretty sure of proving the crime against them. He then ascertains, whether his gains by informing the *Daroga*, or the money he gets from the *Dacoits*, by concealing the crime, will be greatest, and which is the safest plan. If the *Dacoits* are rich, he goes to them privately, tells them he has such and such proofs against them, and asks them how much they will pay him to induce him to conceal the affair. If they can pay well, he lets them off; if they are poor devils, by informing the *Daroga*, he gets his *burkundauzes* and apprehends them. The *Goinda* is very safe. There is little fear that the person robbed will inform against him, for he fears punishment for not informing the *Daroga* of the *dacoity*. There is no immediate obligation for his (the *Goinda's*) coming forward as the accuser, and taking up the robbers. But, even grant that, from the circumstance of his knowing and concealing

concealing his knowledge of the robbers, he should fear punishment, he easily saves his credit, and even acquires applause, by a simple stratagem, which every *good Goinda* is acquainted with. It is this:

In every gang of *Dacoits* there are one or more chiefs, a great number of inferior robbers, and a number of men, who might almost be called innocent men, who have but few or no means of living, and whom the chief (by putting them in fear of their lives) forces to join the party. The purpose of having these men is this. Should the gang be attacked during the robbery, these poor wretches alone suffer. They are employed in carrying the plunder, and loaded with it, they are easily taken, and the chiefs make off; but even in the event of the whole gang being found out, the robbers first attempt to hush up the business by money or threats; and if this does not prevail, they give considerable rewards to the

 Daroga

Daroga and *Goindas*, for their own deliverance, and leave the lesser members of the gang, or at least the poor wretches who have accompanied them, in the hands of the *Goindas*, and these are sent to the Magistrates.

This is a faint attempt at an account of the methods adopted by professional *Goindas*. This class of men is in general highly pernicious; and there are very few cases in which it will be found necessary to employ them. Whenever it is necessary, we ought to calculate, that there are at least ten chances to one in favour of the supposition that they will deceive us. These professional *Goindas* are the ruin of a village, and it was chiefly by their exertions that the jail in *Zillah* Kishnagur was filled in 1809-1810. The moment they heard that the consequence of their giving information against any one, was their being sent to apprehend them, and to rob the villages, they

were

were eager in making up long stories to present to the Magistrate, concerning *Budmashes* (suspicious characters), *Ishtearees* (proclaimed men), notorious *Dacoits*, *Sirdars* (chiefs), *Ferarees* (prisoners escaped), &c.; and the *Zemindars* kindly supplied the lesser members of the gangs, by sending in their *Sur-kush Ryots*, under the name of *Beraderee* (brothers) of the gang. The *Zemindars* kept these *Goindas* in pay, and their stories were always very plausible, because, as they were well acquainted with the real *Dacoits*, and their histories, and by blending a few facts with the other parts of their stories, they gave them the appearance of truth.

The enemies of the *Goinda* system make it a point to forget that there is a description of people called *Goindas*, yet very different from these; I mean occasional and temporary *Goindas*, whom some circumstances attending a robbery may bring forward; and

 pardoned

pardoned criminals, whose pardon is conditional, and only given for a discovery of their accomplices.

Of late, the use of these men has become more common, and, like all other natives, they have in many instances abused the confidence that has been placed in them. The question of their utility has been warmly agitated by the advocates for and against the practice. As the arguments have been ably managed on both sides, it may appear somewhat presumptuous in me to give an opinion on the subject, more particularly as it differs from that of both parties. I can only say, that for my opinion on this subject, I am indebted to experience and practice, and not to theory. I would suggest, that both parties have carried their defence of their respective arguments to too great a height, and that here, as in most other cases, "in medio tutissimus ibis."

As

As I would not employ *Goindas* on all occasions, or give them an unlimited authority, so I would not totally abolish that set of men; for I am convinced, there are cases in which they are of essential use; "That, as "poison is an antidote to poison, the crimes "of a *Goinda* are a security against the "crimes of others." When necessity obliges us to make use of these men, we ought not to keep great bands of them in our public employ, to make them our servants, to send them, with a roving commission, into our own or other districts, and to listen to all the tales they can compose to deceive us, and gain their own ends. Yet all this has been done, and the men who, under certain circumstances, would have been useful, have thus been taught to become the pests of society.

Yet when *dacoity* has got to an extreme height in a district, and is perpetrated by large and regularly organized gangs,—when the

the power and terror of the *Dacoits* are so widely spread, that it becomes difficult to get information against them, there is then no better method for breaking the strong combination against the Magistrates, than by using *Goindas*.

The conditions and restrictions I would impose on the use of *Goindas* are these

1*st*, That they be of the lesser description of offenders, not themselves *Sirdars* or leaders.

2*d*, That they, in the first instance, give a most particular and connected account of their gangs.

3*d*, That in every case where they are sent in search of a *Dacoit*, they be accompanied by a public and authorised police-officer, if it be necessary, in disguise, and that spies be kept on their actions.

The

The two first of these conditions are of very material consequence; for the principal purposes for which we should employ *Goindas*, are the apprehension of the *Sirdars*, and the full disclosure of the combinations and plans of the gangs. The employing and pardoning of the *Sirdars* has a very bad effect on the minds of the natives, who lose their confidence in us, and no longer assist us in the apprehension of these notorious offenders, well knowing, that if released as *Goindas*, they will have their revenge on them in some way, either by procuring their death, or by having them imprisoned as suspicious characters. Nor is it at all necessary that the *Sirdars* should ever be released as *Goindas*; for the lesser members of the gangs answer the purpose fully as well, and, having less to lose, are more likely to give a full account of the proceedings of the gang. You do not improve the situation of a *Sirdar* by making him a *Goinda*; he was much more powerful before; but you improve

improve the situation and prospects of a common *Dacoit*.

There are times when the precautions recommended in the third condition must be dispensed with: these are, when the *Darogas*, the *Zemindars*, or the villagers, are suspected of concealing or harbouring the person to be apprehended; then, and then only, should the *Goinda* be trusted by himself; and even then, restriction should be laid on his conduct. His warrant should only be for the apprehension of the one person, or the number of persons specified, and he should be permitted to seize no one else. If a search is to take place for stolen goods, the warrant must specify the particular house. By punishing such *Darogas* as shall make public, or otherwise impede the proceedings of a *Goinda*, and by accompanying the *Goinda* with experienced and trusty *Peons* and others, we may prevent the commission of very great abuses; and the lesser

abuses

abuses must be pardoned, where the grand work is effected by their apprehending the *Dacoits.* But although I would pardon these lesser abuses, yet I would by no means support the doctrine of some Magistrates, who maintain that *Goindas* should never be punished, for fear of losing their services. This is truly ridiculous, and might with equal propriety be applied to our treatment of the *Darogas*, and of all the officers of our Courts, not one of whom ought ever to be spared, from the fear of losing his services. Where-ever *Goindas* are employed, they will commit abuses; on the strength of their commission, and the terror of their name, they will levy money, they will oppress the people in the villages. I would not suggest that we must bear with these inconveniencies, though even that would be preferable to the state of fear and dread which prevailed among the natives in Bengal, in 1808, 1809 and 1810. We may punish wherever we can make a discovery of their oppressions,

oppressions, and we shall still find the places of those we lose filled by others fully as able, and our old agents, after the period of their punishment expires, much more worthy of trust than before. Where a native servant is turned out of a high official situation, on just grounds, he should never be reinstated in that office, or suffered to enter into any other. Where a *Goinda*, a *Burkundauze*, or other lower servant, is punished, he generally becomes a better servant. I mean this observation only to apply to small offences.

Much as has been said on the subject of the abuses of *Goindas*, by the enemies to their employment, there can scarce be a doubt that the extortion and violence of the *Girdwars** was a source of much greater evil. These

* *Girdwars*, a new species of Police Runners, who were employed all round Calcutta.

These men were employed by the Magistrate of Calcutta, in the neighbouring *Zillahs.* At a distance from his own residence, and out of the reach of his authority, they committed all manner of abuses, and became the terror of the country. As if to render them at once useless as police agents, and terrible as instruments of extortion, they were armed in a new manner (with pistols), and fancifully dressed, so that their entrance into a village was immediately known to the objects of their search. The escape of the criminal was to them the most desirable thing that could happen, for they could then search all the houses that they chose to suspect. Not content with their gains in this way, they became the planners and instigators of robberies, sometimes joining in the spoils, and letting all the gang escape; at other times, as if unexpectedly, breaking in on the gang on the spot, and seizing a few poor wretches, who could not pay for their freedom, sending these to the Magistrate,

Magistrate, with perhaps a small part of the booty. To the abuses of these *Girdwars*, I have myself been a witness, for I happened to be employed in the interior of *Zillah* Nuddeah, at the time they were allowed to patrole the country, and have had many accounts of their ravages from the people of the villages around me.

From all that has been stated, it will be perceived, that the employment of spies, though certainly an evil in itself, is yet in some instances a very necessary evil. It has been practised by every efficient police with which I am acquainted; but it ought only to be suffered, when the country is in a very bad state, or where any one particular crime calls loudly for its aid.

The *Goinda* system is also particularly useful in India, in ascertaining the facts of a robbery or other crime, and in selecting and bringing forward the evidence, which shall

shall effect the conviction of notorious criminals. But here, again, it should never be used, where there exist any other means of accomplishing these ends. All concealed proceedings are said to shew the weakness of a government. This is true; but, in this respect, we must forget some of our European prejudices. Those who live under a free Government, revolt at the very idea of employing a secret agent during the trial of a criminal. I sincerely trust that such a practice may long be as unnecessary in England as it is now. But, in India, we have none of that open independence, and regard to truth, which ensures the coming forward of evidence and the giving a faithful narrative. English witnesses are protected in their persons and in their property, but the horrid examples of revenge with which the *Dacoits* have furnished the natives, and the idea, that if not plundered of every thing they possess in their absence at Court, yet at least that they are kept at a

great expense, and for a long time, have had their influence in preventing witnesses from coming forward. What, then, is to be done, when notorious offenders are put on their trial, and no one will come forward against them. Are they to be acquitted, or are we to use the only means of convicting them, by the use of *Goindas?*

These means should certainly be used with discretion, and never, but in cases of absolute necessity. If we do not make this use of them, we may rest assured, that the evidence sent in by our *Darogas* will be marshalled and instructed by the *Goindas* whom they will employ, and the abuses attending this practice will be much greater for this plain reason, it can never be the interest of a Judge, for his own sake, to convict a prisoner who is innocent; but it becomes the interest of a *Daroga* to effect this conviction after having once sent in the man, first, from the good name it gets him

with

with the Magistrate, and, secondly, from the *head-money*, and the share in the plunder of his house, and lastly, to keep up the terror of his name in the country, or to oblige a *Zemindar* or other interested person.

There is another material point to be considered in the employment of *Goindas*, more particularly those who are themselves criminals, viz. How they are to be treated after their services shall be no longer required.

Goindas, whether professional (if such should ever be used), or convicted and pardoned criminals, should never again be suffered to return to their villages. For the professional *Goinda* will be doubly terrible, from having been countenanced and employed by the Magistrate ; and the appearance of the released convict will surprise and frighten the unthinking among the

peasants, and will prevent their apprehending others.

The natives have not yet forgotten those days of blood, when a released criminal cut the throats of those who had informed or given evidence against him; and the best of *Goindas* will always feel inclined to seek revenge.

The safest plan, and the only plan by which we shall at once prevent these evils, and have their services, is to make them what are termed in India *Huzooree Burkundauzes* or *Peons*; these are men, who, armed or unarmed, attend constantly on the Magistrate. By having men of this description from different parts of his *Zillah*, and many of whom are connected with the different gangs, he will at all times be able to obtain information on the occurrence of robberies and other crimes, and he will, when occasion requires, send these men in-

to the villages, under proper restrictions, and attended by proper officers.

I have attempted, in this chapter, to mark strongly the distinction between professional *Goindas*, who reside in the villages, and occasional spies, made use of by the Magistrate. The evil done by a professional *Goinda* in a village, always exceeds the good; and this is more especially the case where he is a notorious character; his terror, and power of doing mischief, always increasing in the proportion of his notoriety.

A man of this description, for each guilty person, will take up five innocent persons, merely because they will not pay him. I remember an instance of this in a trial where a *Goinda* was the prosecutor. He bore the appearance of a respectable man, and seemed to be clever in his profession; but being somehow put off his guard, and

having said something that tended to invalidate his complaint, he suddenly exclaimed, "I will shew you other proofs in abun-"dance." On this he pulled out, from under his clothes, a large bundle of papers; —from curiosity I seized upon them;—they well rewarded the pains I took in going through them;—they laid open a scene of villainy, of the existence of which I had not till then the most distant idea;—they shewed a complete system of *Goindugee.* There were accusations in all their different stages of perfection; some were ready; some half prepared; others in which he had only got the materials for the foundation collected, containing the names of persons at enmity with each other, names of persons robbed, &c. Having destroyed the whole, I had him publicly punished, for not proving his complaint.

In another instance, a *Goinda*, prosecuting, brought a complaint against eight persons

sons for burglary, stating, that he had apprehended two of them in the act, and that these two had confessed, and implicated the other six. In the course of the trial it was proved by a number of witnesses, that the prosecutor, who was also a watchman at the indigo factory which was robbed, had not been informed of the robbery till an hour after its occurrence, when his master came and told him that the robbers had run off. As his character, however, was at stake, he thought it incumbent on him to apprehend some one: he therefore went to the house of two men, who, from the existence of a quarrel about a woman, were his enemies. These two he apprehended, and confined them in a close apartment for two days. Having offered them money, in vain, in order to extort a confession from them, he at last sent for two bamboos, and laying them across the breasts of the prisoners, he scorched them in five different places with torches. Their wounds were

still fresh when they were brought into Court. The prosecutor said, that they had hurt themselves in scrambling through the walls of the factory. After thus burning them, as they still persisted in denying, he caused their hands to be tied across the fingers, and having inserted small wooden wedges between each finger, he drove in the wedges, till the poor wretches, mad with pain, said they would confess any thing he chose. He then mentioned the names of six other persons, who were proved to be also his enemies, and they agreed to implicate them.

In this case, the *Daroga,* from an oversight, or, perhaps, from a better motive, sent the men in immediately with the wounds fresh. The men accused were proved by most respectable witnesses, to be men of excellent character. The quarrel with the prosecutor also came out. It appeared, that the prosecutor and two of his

friends

friends had, as joint property, a girl, whom they had compelled one of the villagers to keep in his house; he being a respectable man, was unwilling that the girl should live there, he asked assistance from the prisoners, and by their aid he had the woman removed from the village. The prosecutor, bent on revenge, was often heard to say, that "if the whole village should suffer, he "would keep the woman there." How he executed his revenge may be seen. The law demanded that I should make over this wretch to the Court of Circuit; but the proof might not have sufficed for the scrupulous conscience of a Mussulman Moluvee, —the man had many friends. I had him immediately, therefore, taken to his village, and punished there.

These instances will shew what we have to expect from professional *Goindas*. But, notwithstanding the many advantages I have mentioned as resulting from the employment

ployment of the other description of *Goindas,* I cannot conclude this Chapter, without again remarking, that even this description of men are yet only to be employed where other means have proved ineffectual: that where employed, it must be with caution; that their abuses of their power must be punished; and that, where their services are no longer necessary, they must be provided for, and never suffered to return to their villages.

CHAP.

CHAP. VI.

CONTINUATION OF THE CAUSES OF DELINQUENCY.—FACILITY OF ACQUITTAL WHILE UNDER TRIAL, IN THE FIRST INSTANCE, BEFORE THE MAGISTRATE, AND AFTERWARDS BEFORE THE COURT OF CIRCUIT.—FALSE EVIDENCE EASILY OBTAINED.—THIS ARISES FROM THE TOTAL DISREGARD WHICH THE NATIVES HAVE FOR TRUTH, AND FROM THE SMALL PUNISHMENT ATTACHED TO PERJURY.

In considering the facilities of acquittal which a criminal enjoys, and which is the subject of the present chapter, we must also notice the grounds on which he founds *his hopes of escape*; 1*st*, Before apprehension; 2*dly*,

2dly, After apprehension, and previous to trial, as well as when on trial before the Magistrate; *3dly*, After trial before the Court of Circuit, and while on trial there. This arrangement is more convenient than that of considering, as a separate cause, the chances of escape previous to trial.

Let us first consider the chances of escape for a criminal, without the form of a trial.

It is the habit of robbers and thieves to look only at the fair side of the picture of a criminal life. The gallows is either thrown into shade in the back ground, or it is left out entirely. In a Pamphlet of Sir SAMUEL ROMILLY, on the Defects of the Criminal Law in England, there is a speech which might be put into the mouth of almost every criminal, and which I have often heard from the natives of India: "Lord, "Sir, I never dreamt it would come to "this!

"this! There are, first, so many chances "that we shall never be detected; then, "that we shall escape, if detected, without "a trial; then, that we shall escape on "trial for want of evidence; and, lastly, "there are such hopes of escape after con- "demnation, that we never think of being "hanged." I quote from memory, but I believe this to be the manner of reasoning most common among thieves.

In India, the chances of escape, without a trial, are perhaps double what they are in England; and this proceeds from the unbounded corruption of police officers, and the want of regard to truth in the witnesses.

In so vast an extent of country, it is impossible that the few Europeans, who have charge of the police and the Courts of Justice, can have their eyes in every direction; they must trust much to their native officers,

cers, and of these I will venture to assert, *that there is not in Bengal one man proof against a bribe.* The *Dacoits* and robbers, while they have booty, are sufficiently safe; and we have those only sent in, who have ceased to pay for their freedom. The wealth of a *Dacoit* generally increases in the direct ratio of the number of his crimes; and thus the greatest criminals are allowed by the *Darogas* to escape, and these JONATHAN WILDS only send in the lesser offenders. The *Darogas* either suffer the criminals to escape, without having gone through the form of apprehending them, or they apprehend them, extort what they can from them, and then let them go. But this last method is less common than the other, from fear of their enemies in the villages keeping witnesses to the fact of the apprehension, and afterwards bringing the case forward.

Professional

Professional *Goindas,* who have apprehended criminals, are used to let them go in the same manner, and with less risk, from their having little responsibility attached to themselves. And the *Burkundauzes* or guards at a *thanna,* frequently let the prisoners "shew themselves thieves, by stealing out of their company." There is also a great chance that the *Daroga* shall never hear of their crimes: many of these good men trouble themselves very little about the state of the police, living well, and making fortunes *by selling their power and influence to the Zemindars.* Under a cold or careless Magistrate, all these chances of escape are doubled; so that, in India, the probabilities that the criminal shall never be brought to trial are perhaps ten to one.

Let us now suppose, that he is lodged in the jail of the Magistrate. He has then a chance of escape from it. This is not great,

not

not one in a hundred escaping from the worst of our jails, while under examination. He is brought up for trial before the Magistrate; it is then that all the engines are brought to bear, The *Aumilah* or Court-officers around the Magistrate, enquire whether the criminal can pay in his own person, or whether it is worth the while of his *Zemindar* to pay for him. If by either way they can gain, then witnesses are kept back; the proceedings are garbled; trial delayed in some cases, in others hurried on. The Magistrate is attacked in his *mollia tempora*, insinuations are given out against the prosecutor, the witnesses are pre-instructed, and awed into the views of the parties; and all this is frequently carried on with such cunning and address, that the discovery of it is impossible.

If the criminal may not have sufficient means to secure the services of the Court-officers,

officers, still his friends and relations in the country will supply him, while in jail, with the little money they can scrape together; and of this he makes use in paying the jailor, for allowing these friends access to him, as well as in bribing witnesses, and buying over prosecutors. *Goindas* are also employed by criminals, while in jail, and paid by them, to intimidate, tamper with, and instruct witnesses. These hold out to the witness the terrible revenge which the *Dacoits* will take on them if acquitted, or after the period of their confinement.

The kindness shewn by the relatives of a confined criminal, among the natives, is beyond what will easily be credited. This constitutes one of the best features in the Bengalee character. His mistress, perhaps of a different cast from himself, will now join with the father and mother, in attempting to effect his release, or soften the rigour of his confinement. All will sell their house-

 hold

hold utensils, their jewels, and the very clothes from their backs, for this purpose. You will see them hovering about the jail, and skulking in different places near the Court, anxiously waiting the result of each day's proceedings; sending messengers to the village, to prepare matters for his trial, and quitting him only at his death.

The jailors in India are more than commonly corrupt. They live by joining with the contractors, for the supply of jail provisions, and by the little paltry sums they receive from the prisoners and their friends. Near to each Indian jail, you will generally find a *bazar* or village, of miserable looking low huts, inhabited by people of all casts and colours, and different in its appearance from any other village. This is the place of resort of the friends and relations of criminals. Here also you will generally find a set of men calling themselves *Thannah vakeels.* These men are the most abandoned wretches alive.

alive. They live on the necessities of the prisoners. They make them pay enormous sums for becoming bound to the Court, as their *Zemindars* or securities. They also pretend to conduct their affairs while under trial. These men are acquainted with the characters and haunts of all thieves; and when themselves brought into a scrape, much information may be had from them.

I happened to be Assistant to the Magistrate at Nattore, when a very notorious offender, named Pundit Shah, escaped from the jail there. He had twice before broken jail; and as this was generally known, he was loaded with irons, on his hands, feet and neck; but these were of no avail where the never-failing solution of silver was applied: he escaped; and on the trial of the jailor and guards, (which, as it was a very curious one, I translated by order of the Magistrate,) there was disclosed the whole theory and practice of jail management.

—It appeared, that most of the prisoners who could afford to pay for the indulgence, were allowed to *sleep out of the prison several times a-week:* That they were lodged in huts in a small *bazar* at a little distance from the jail. In the hut where Pundit Shah slept, his mother, two of his sons, and two of his mistresses were found; and in the other huts, the relations and mistresses of many of the other prisoners. The sums of money which were proved to have been brought to him while in confinement were incredible. This money he had liberally distributed among the *Sipahees* of the Provincial Battalion, who guarded the jail, among the jailor and his people, and even among his fellow-prisoners. It was proved, that he had paid a small sum of money to every prisoner who was in the same ward with himself, in order to prevent their attempting to escape at the same time with him.

But

But granting that all such attempts of prisoners are unsuccessful, and their trial comes on before the Magistrate, and, lastly, before the Court of Circuit, the criminal is far from being without hope. He has hopes that the prosecutor may be intimidated, or may perjure himself; that he may not recognize him in his new garb and appearance. For his appearance he has, perhaps, completely changed; sometimes by letting his hair and beard grow; sometimes by shaving both; sometimes by changing cast altogether in his dress. The jail has also altered his appearance. But, allowing that this also fails him, there is then left the hope arising from the clashing between the testimonies of separate witnesses; the difference between testimonies given before the Magistrate and those before the Court of Circuit: There are the niceties of the Mussulman law; and, in short, there are all the evils attending Indian testimony and Indian ju-

 risprudence,

risprudence,—a subject which we shall now proceed to consider.

The merely English reader will, I trust, refrain from laughter, when he is told, that in India, it is necessary to lay down rules for the management of witnesses. That there are particular ways, and sometimes even tricks, by which you must get at a knowledge of the truth. I shall only propose to him one question. When on a trial, all the witnesses tell lies, what are you to do? Is the criminal to escape, and are you to employ your time in the trial of the witnesses? In England, you would acquit a prisoner and try the witnesses. In India, you must convict or acquit the prisoner on the strength of *that portion of truth which you can pick out of the compound mass of truth and falsehood.* There is not such a thing known in Bengal, as a deposition that does not blend them

together.

together. This curious fact must be kept in mind by the reader, otherwise he will not understand what follows.

The want of truth is a failing very generally allowed to be prevalent among the natives; but few, except the Judicial Servants of the Company, are acquainted with the length to which it is carried. It is said to proceed from their religion,—from their education,—and from their situation, as inhabitants of a country ruled from time immemorial by despots. These have all their effects; and the Hindoo character is their joint offspring. Their religion permits of occasional falsehood: their education does not restrain them in the use of it; for, among young people it is very generally esteemed a mark of cleverness: lastly, tyranny and oppression always produce cunning and falsehood. But it is with the effect, not with the cause, that we are at present engaged.

It must not be supposed that a Bengalee in every situation tells lies. This would be too ridiculous, and it would not be the fact; but it may be taken for granted, that in every situation where a Bengalee is under the fear, or even under the restraint occasioned by the presence of a superior, his testimony on any subject will be *a tissue of truth and falsehood.* He will be over cautious in his answers; he will weigh every question. In his mind, the idea that you wish to entrap him will always be uppermost: he will at first only keep back the truth till he sees your object; but when pushed, harassed and stupified by your questions, he will tell you any thing but the truth. Our law says to a witness, "You "shall tell the truth, the whole truth, and "nothing but the truth." But a native witness seldom tells you the truth at all,—often tells a part only,—and often, indeed, in ten cases out of every twelve, a great deal more than the truth. It is in this last

case,

case, that an Indian Judge will be puzzled, if he adhere to the spirit of English law, if he forget not entirely his English prejudices. But if he select the truth from falsehood; if he believe only that part of a testimony which many witnesses corroborate, and which is, perhaps, further confirmed by collateral proofs, by circumstances, written documents, &c. he will then be able to discharge his duty.

It is not uncommon for those connected with the Supreme Court of Bengal, to laugh at the proceedings of our *Mofussil* (or country) Courts. The chief points which afford them amusement, are found in the irregularity of our proceedings, and in our treatment of witnesses. It is true, our proceedings are irregular,—because they are summary,—because they are tied down by no stiff forms; but were the nature of these proceedings changed, the business of a *Zillah* would be infinitely worse managed by

fifty

fifty Supreme Courts in each *Zillah*, than by one Indian Judge.

As to the credit we attach to evidence, and the manner of conducting it, a little more knowledge of the country and its inhabitants, would go a great way towards removing the ancient and stubborn prejudices of an English lawyer. The members of the Supreme Court of Judicature will, perhaps, be astonished to hear on whose side the natives throw the laugh. They say to them,

> Quid rides? Mutato nomine, de te
> Fabula narratur.—

And what is their story? That the regard paid to testimony in the Supreme Court, is the laughing-stock of every one among them.

Let it not be supposed, that by noticing this one defect, I mean to throw into ridicule the proceedings of the Supreme Court. This Court, I will admit, is indispensably necessary.

necessary. It has done much good. But few who are acquainted with the peculiarities of our Indian subjects, and with their long habits of submission and deference to their superiors, will doubt that this Court has also done much mischief. In the neighbourhood of Calcutta this is most perceptible. There the respect and deference shewn to the European character, has long ceased to influence the conduct of the natives. If India is (as Mr. HASTINGS observed,) "a "government of opinion," this change may deeply wound our power.

The English law supposes the rights of all equal. It gives the lower orders of society their vote in the formation of laws, and in the every act of government. It levels ranks. It disregards casts and prejudices. It is fluctuating. It is human. The ancient laws of India, on the contrary, are suited to a despotic government. So far from considering the rights of all equal, they

they inculcate implict obedience in the lower ranks to their superiors. They admit of no interference on the part of the people in the affairs of Government. They do not level all ranks; and they pay the utmost regard to cast and prejudices,—their laws never change,—they are held to be of divine origin.

Let it be remembered, that these laws have, during a succession of ages, formed a distinct character,—the victim of stubborn religious prejudices. When we assumed the management of the country, we promised to rule the natives by their own laws. This promise we have, prehaps, broken, but, so far as the breach was not made too wide; so far as it was necessary and salutary, no blame is here meant to be thrown on Government. Some change certainly, some little intermixture of our own forms of busines, but more particularly of our own principles, with theirs, was necessary. We

may also, I think, gradually introduce English principles where they are needed, without changing native forms. But these changes ought only to be made where the good resulting from them counterbalanced the great evil of a breach of faith, and the serious danger of an interference in the religious customs and social habits of the natives.

We have, perhaps, already gone too far; we have introduced too much formality into our Courts. We have not only introduced the Mussulman Law, but we have also set up to our imitation English models in the constitution of our courts; and now we begin to be sensible that such latter changes have been for the worse. The arrears of business all over Bengal are a sufficient proof that this is the case. A little summary justice is at times an excellent thing in India. If we say that we adopt the native law, and promise to our subjects they shall be judged by it, we shall give them a

bad

bad idea of our justice, by so easily departing from it. I sincerely hope, that the time is fast approaching, when we shall have justice administered by Europeans only, as Circuit Judges, and when the Mussulman Law, in criminal cases, shall be altogether disregarded. To preserve to the natives their own law in cases of inheritance, and in all cases connected with their religious habits and civil customs, is certainly very desirable; and were we to deprive them of their own laws on these subjects, we should, in all probability, raise such a ferment as would in the end occasion the loss of the country. But they have already a very great confidence in our decisions in criminal cases, and would in these receive the English laws with thankfulness.

The Mussulman criminal law is illiberal, inhuman, and unjust; and these alone ought to be sufficient reasons for our abandoning it. But independent of this, the Mussulman

Moluvees

Moluvees are universally corrupt throughout Bengal. I am not singular in my opinions respecting the Mussulman law, and the character of its professors. There is not an experienced Indian Judge, that does not anxiously desire that it should be abolished. But, as our Indian Judges may be supposed prejudiced, I shall here insert some excellent observations of a Military Officer of great talent and acuteness, who must have viewed our measures for the administration of justice in their effects, and who, though sometimes misinformed, cannot be supposed to be biassed in his opinions.*

"To

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* The auther I allude to is Colonel WILKS. I do not mean it to be understood, that I assent to all the opinions of this gentleman, as given in the following extracts; but I do not wish to garble them. And in his statement of the inadequacy of the present system of judicial administration; in his aversion to the use of the Mohummedan law, and in his description of native evidence,

"To apply the criminal law of Arabia, the most defective on earth, and the least capable of correction, to the Hindoo subjects of Great Britain under the Government of Fort St George, is just not quite so absurd as to import the criminal law of Japan. If it were even admitted, that the principles of the *Koran* are more susceptible of improvement than the law of the Hindoos, the absurdity would still remain of governing that people by a foreign bad code, when we may, with equal facility, govern them by a foreign good code, namely, the English law, which, even in point of prescription, had a local existence before the

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evidence, I fully coincide with him. He has generally a much more favourable opinion of the native character than I have, and on good grounds, for I believe the inhabitants of the south of India are a far better race of men than the Bengalees, and totally different from them in their dispositions. Yet it appears, that even among those of the south, a witness on a trial is to be believed.

the scourge of Mohummedan conquest, and Mohummedan law, had yet reached the plains of Coromandel.

"In the Civil Code, we profess to administer justice according to the laws of the parties. This subject requires a more ample discussion than can be given in the compass of a Note. The essential nature and objects of justice are every where uniform. The end is the same,—the means are various. The principles of law in different countries do not materially vary. Particular laws and regulations consist less in declaring general principles, than in applying them to existing customs, and not unfrequently in a bare enumeration of the forms of legal proceedings. With a people like the Hindoos, among whom religion and law, and the forms of legal proceedings, are all of equal sanctity, and considered to have the same divine origin; the substitution of the

the forms of Westminster-Hall for the forms prescribed by the Sacred Codes, or rendered equally venerable by immemorial usage, if not a subversion of an important part of their legal system, is, at least, a violation of customs which we profess to respect. Principles, in all countries, are understood by a number sufficiently small: forms by every one; and if we can condescend to govern the Hindoos by their own forms, we may (I do not affirm that we ought) correct the principles of their law, without its being generally observed or opposed. But holding in constant recollection the character of the people to be governed, it is incontestible, that we may introduce Mohummedan or English law, both or either, directly or covertly, without the most distant chance of any influence, immediate or remote, in ameliorating the morals of the people, or changing their opinions, in any other way than that of creating disgust at our rule.

"Exclusively

"Exclusively of forms, I fear that some fundamental errors of principle have been committed. Imprisonment for debt, for example, which is considered by many of the philosophical reasoners as one of the most defective institutions of European Jurisprudence, is unknown to the ancient codes, or to the common law of the south of India, and is repugnant to all habits which so peculiarly separate that race from the rest of mankind. But this terrible and offensive innovation has been introduced into the English Civil Code, which professes to govern the Hindoos by their own laws.

"The distinction of casts, which is absolutely the key-stone of Hindoo law, has unfortunately either not been recognised at all in our laws and regulations, or indirectly treated with contempt, thus insulting the higher, without gratifying the lower orders; and, added to the novelty of our forms, exciting in both the apprehension of farther change.

change. It would be absurd, as it would be unjust, to impute to the authors of this system the intention of proselytism; and it can only be lamented, that it has contributed, among other causes, to produce the belief of such an intention. But if, as some publications give reason to believe, such views have really been entertained by other persons, it will be incumbent on sober thinkers seriously to consider, that, exclusively of the excess of visionary folly, it is a most unmanly, ungenerous, and unchristian deception, to veil this object under the pretext of respecting the civil and religious customs of the people; for all their customs, from the most trifling to the most important, are incorporated with their religion, and all ought to be held sacred.'

"The founder of a Philosophical Utopia would certainly reject, with abhorrence, a system which tends to enslave the human mind, and to entail hereditary degradation on

on a large portion of his citizens. But we are not here discussing a speculative theory. The objects of our contemplation are not metaphysical entities, to be moulded into ideal forms; but human beings, already fixed in stubborn and immovable prejudices, to which any system founded in wisdom and humanity must necessarily conform. It is not the question, it never can be the question, whether the English or Hindoo Code of Religion and Jurisprudence be entitled to the preference; but whether the Hindoo law and religion, for they are one and the same, are, or are not, to be maintained; or whether we are at liberty to invade both. If we profess to govern the Hindoos by their own laws, let us not falsify that profession, by tearing them up by the roots, under pretence of pruning and amending them. They are no longer Hindoos, if they are subject to innovation.

"To return to the question of cast. To equalize them is impossible; to attempt it, offensive to those whom we would exalt, as well as to those whom we would debase; and if we possessed the power to exercise, it would be a gross and intolerable oppression. That our regulations, where they do extend, and where they have not yet reached, are considered with terror as the instruments of a foreign rule, and that the Hindoos neither do, nor can feel that they are governed by their own laws, seems to have been distinctly foreseen by the able and learned officer (Colonel LEITH), who aided in the first compilation of the Judicial Regulations of Fort St. George. In a Preliminary Report, he deprecates the idea of sudden innovation, and observes, "that the system ought to grow out of the first germ, rather than start at once, full grown, like Minerva, from the head of Jupiter, shaking a lance and ægis at the astonished native."

tive."—" They will gradually arise, as the best laws ever have done, out of the manners and habits of the people meliorating and reflecting back the principles they have derived from them."

" In framing a new and full grown system (since, however, exceedingly enlarged), the excellent and able men who were employed, naturally referred to the system of Jurisprudence which we are all habituated to revere, for their rules, their forms, and modes of procedure, down in many instances to the technical terms. Fixed Judges and Magistrates have been established, and Courts of Appeal, of Circuit, and of Jail delivery, with all their English appendages, and a superior Hindoo Court, with a Perso-Arabic title administered by Englishmen; and it has already become a difficult study to be able to understand the voluminous code which has been framed. Of all this I should wish to speak with reverence; but

 really,

really, an enormous amount of technical labour, and skill, and expence, and the application of most respectable talents, terminates in performing the proposed operation very ill, or not at all. The component parts are clogged by their own complexity and missapplication. The machinery of an ARNOLD's Chronometer has been employed to perform the work of a smoke-jack.

"If Anglo-Indian legislators would throw off a little of that which they sometimes too largely ascribe to the natives of India, namely, the prejudice of education, they would find the rules of proceeding prescribed by the Hindoo Code (with all its numerous imperfections on its head), combined with the local customs or common law of India, not ill adapted to the state of society to which it was meant to apply; and the *panchait* or Indian jury, which is, or rather was universally established in the south, as the common law of the land, an admirable

instrument

instrument of practical decision. The Hindoo character, like all others, is of a mixed nature; but it is composed of strange and contradictory elements. The man who may be safely trusted for uniformly unfolding the whole truth to a European, in whom he reposes confidence, may be expected to equivocate, and even to contradict every word he has said, if called on to repeat it in the presence of a third person, whom he either fears or suspects; and in one of these descriptions he usually includes all strangers. The same description of men, sometimes the same individual, who, from pique, and often without any intelligible motive, will perjure himself without shame or compunction at a public trial, is faithful, kind and respectable in the intercourse of society, and the single but notorious fact of lending and borrowing money and effects among the husbandmen, without bond or note, or witness, abundantly proves that the people so apparently destitute of morals, in

one

one view of their character, are, in another, habitually honest and true in their dealings, that they mutually trust, and deserve to be trusted. The more intimately they are known the more favourable is the judgment of every good and humane European on the character of this interesting people; but fully to be understood, there requires to have lived and been educated among them, as one of themselves. And I conscientiously believe, that, for the purpose of discriminating the motives of action, and the chances of truth in the evidence of such a people; the mature life of the most able and acute European Judge, devoted to that single object, would not place him on a level with an intelligent Hindoo *Panchait.*

"To govern the Hindoos in reality, and not in pretence, by their own laws and customs, civil and criminal, would admit of extensive aids in Judges and juries *(panchaits)* from

from among the natives themselves, checked without material danger of corruption, by a reduced scale of European controul.

"The new establishments of Police, on which large sums have been expended, might be entirely retrenched by putting in activity the admirable institution of village officers, and directing, instead of attempting to destroy this excellent instrument of police, of which I speak, not from vague tradition of what it has been, but from a close observation of what it is. If theory required that the judicial functions should be rendered distinct from the fiscal, it seemed equally to demand the separation of the Judge and Magistrate, which have been united in the new system with the most obvious practical inconvenience. There may have been a real propriety in preventing the fiscal officers from becoming the Judges in a contested case of fiscal demand, (although we do not see this propriety actually acknowledged

ledged in England); but beyond this there seems to have been little necessity for the cumbrous establishment to which we have adverted."

This is the opinion of Colonel Wilks; and in it he says, that he is supported by many respectable authorities among the Company's Servants, and among English lawyers. Now, in quoting this at length, I have two objects in view; first, To support my own opinions by those of an experienced and most intelligent author, in as far as we agree; and, secondly, To combat such parts of his statement as I cannot help objecting to.

Those who are acquainted with the arrears in civil and criminal business which now exist in the *Sudder Dewany* and *Nizamut* Courts, and in the subordinate Courts of each *Zillah* Magistrate in Bengal, those who have noticed the frequent aids which it has

has lately become necessary to give to these Magistrates in the appointment of Assistant Magistrates, Assistant Judges, head native Commissioners, &c. must see, that the observation of Colonel Wilks is a just one, when he says, that "the duty is ill perform-"ed" by the present arrangement. But it does not follow that the arrangement is incapable of improvement, it does not follow, that the promulgation of the Hindoo law and Hindoo forms of justice would have a better effect.

All that are acquainted with the Mussulman Law, and the Mussulman mode of procedure in civil and criminal cases, will allow that it is the most faulty, perhaps, on earth; but it does not thence follow, that a law which has long governed the natives of many parts of India, at times with success, which has checked violent crimes, and has secured private property, should have no one good feature worthy of imitation in it.

All

All who have resided among the natives, and who know their scrupulous regard for every thing connected with their religion, and for the forms and ceremonies of cast, will coincide with Colonel Wilks and with Colonel Leith, in the assertion, that no sudden changes should be made in their laws, and that no interference should be allowed regarding their casts. But I should certainly apprehend, that these can only apply to material, and in themselves obnoxious changes,—not to changes in the many indifferent forms of law process which their sacred codes do not insist on. All Indian Magistrates will agree in the opinion expressed by Colonel Wilks regarding the superior advantages possessed by a native in discriminating between truth and falsehood in a witness, and yet few, on deliberate consideration, would be inclined to make use of Hindoo juries or *panchaits.* But let us consider each of these heads separately; and first, with regard to the present administration of justice,

tice, the insufficiency of the arrangements made, and its merit, when compared with other plans.

When we took the management of the country into our own hands, and began to interfere widely in the concerns of the natives, we effected a very material change in their habits, by rendering them, more than they ever had been, a commercial people. Their trade was no longer confined to barter between one village and another, or one province with another; but their dealings with each other, with our agents, and with ourselves, became extensive. As "honour sinks where commerce "long prevails," we did not improve their moral character by increasing their trade. Debt-courts, and imprisonment for debt, thus became absolutely necessary, and in the want of these was found an objection to their laws.

We

We found among them Courts of Justice, if they deserved the name, held without regard to a stated time, without stated forms, but at the will of their superiors, and of a nature arbitrary and cruel: no records of trials, consequently no appeal from unjust decisions: no limit to fees and perquisites: a system of punishments frivolous and fanciful in some cases, in others unnatural and barbarous: every man of property, every *Brahmin*, every *Moluvee*, or *Cazee*, or *Mooftee*, exercising judicial authority. Here, were more objections to their laws and forms.

But let us suppose, that these laws were carried wisely and constantly into execution, it then became necessary to examine these laws, and to shew the people that we were just, as we had shewn them we were brave. We then kept our footing in the country by our name only.

There

There were throughout the empire to be found but two Codes of law,—the Hindoo and the Mussulman. The first of these, to use the words of one of its most strenuous advocates (Sir WILLIAM JONES), is "a system of despotism and priestcraft, "abounding with minute and childish for-"malities, with ceremonies generally ab-"surd, and often ridiculous;" its "pun-"ishments are partial and fanciful,—for "some crimes dreadfully cruel; for others "reprehensibly slight;" and "its very "morals, though rigid enough on the "whole, are, in one or two instances (as in "the cases of light oaths and pious perju-"ry), unaccountably relaxed."*

How was it possible for us to reconcile with our ideas of justice the Hindoo doctrine of penance, as a sufficient atonement for crimes, or the partiality by which a Brahmin,

* See Preface to the Institutes of MENU.

Brahmin, though guilty of the worst of crimes, was never to suffer death, the loss of limb, imprisonment, or the loss of his property. "Never," says MENU, "shall "the King slay a *Brahmin*, though con-"victed of all possible crimes: Let him "banish him from his realm, with his pro-"perty secure, and his person unhurt."*

How could we countenance the Criminal Code, which makes hanging the way to heaven,—which writes over every gallows, "*Sic itur ad astra.*"—"Men who have "committed offences, and have suffered "from Kings the punishment due to them, "go pure to heaven, and become as clear "as those who have done well."†

These are a specimen of the defects of the Hindoo Code. Innumerable others might

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* Institutes of MENU.

† See Institutes of MENU.

might be collected: but these are sufficient for my purpose. We could not pay much respect to a law founded on such principles. Next, let us look at their practice,—at their forms of procedure. Of these we do not find much mention made; but from all accounts they were very imperfect. MENU tells us, that the King, if he cannot himself sit in judgment, shall depute his authority to *Brahmins* eminently learned. There were, consequently, in every village, these Brahminical representatives of royalty. Even when we took the management into our own hands, as may be seen by the preambles of our first regulations, these little Judges were every where found. Men who dispensed justice according to the gradations in cast, as ordered in the law, men full of apathy, or oftener instigated by a cruel contempt of the lower ranks, and intolerant of all who were not of their own religious tenets. Men who, when they wished to be corrupt, had ample opportunity, by making

use of the extreme nicety of their law with regard to witnesses; sometimes altogether disregarding, at other times giving little credit to the testimony of "*familiar friends,*" —"*servants,*"—"*cooks,*"—"*dancers and* "*singers,*"—"*dependent men,*"—"*the low-* "*est mixed classes,*"—"*one extremely* "*grieved,*"—"*one tormented with hunger* "*and thirst,*"—"*one oppressed with fa-* "*tigue.*"*

Such was the method of procedure. It had, I will admit, some advantages, which I shall afterwards mention as worthy of our imitation; but as a system by which we were to administer justice to the natives, it was certainly not worth our notice. I mentioned their punishments as fanciful and unjust. "The witness who has given evi- "dence,

* All these descriptions of persons are, according to MENU, never to be heard when it can be avoided, and then not to have much credit.

"dence, and to whom, within seven years, "a misfortune happens by disease, fire, or "death of a kinsman, shall be condemned "to pay the debt, and a fine."

The only remaining Code, if we found the Hindoo one insufficient, was the Mussulman Code. It has many, indeed almost all the defects of the Hindoo Code. It is intolerant of those of another religion, full of formalities, but wanting in substantial justice. Nice and scrupulous to a degree about evidence. Rejecting almost entirely the evidence of women. But it had some few good features. The proceedings were summary; it had not a pernicious regard to gradations in society in punishing crimes; and it was the law of the conquerors, to which the natives had long paid obedience. Still, as in its first principles it revolted from our ideas of justice, we could not make it the ruling Code. Thus circumstanced, then, what were we to do? Without some system of

of administration of civil and criminal justice, every thing would go wrong. At one blow to root out both the Indian Codes, and to introduce our own, would probably have lost us the country. I certainly think, that the conduct of our Government was wise. They made use, for a time, of Mussulman and Hindoo officers, who were the only judicial and criminal officers then acknowledged; they put these officers under European controul; rather than commence without method, they permitted them to make a temporary use of their own pre-established forms, and they began to form, from a judicious mixture of English principles with Hindoo and Mussulman forms, a system eminently adapted for the administration of civil and criminal justice;—a system which, though possessing many disadvantages, and which at times has been injured by our inattention to the proportions of our Hindoo, Mussulman, and English ingredients, has yet, as a Code for our Indian possessions,

possessions, very superior merit to any one of the three several Codes from which it has been formed.

In order to conciliate the natives, it was necessary to shew, that we only filled the place of their former rulers, and would demand, not their possessions, but the ordinary rent. We, therefore, continued to them their own laws regarding inheritance, succession, &c. It was also necessary to shew them, that we would not interfere with their religion. We, therefore, continued to them their own laws regarding marriage, cast, religion, &c. As long as these material points are not touched, we shall, as we do at present, possess the confidence of our native subjects; and so far from being of the opinion of Colonel LEITH regarding their sentiments of our Government, I most sincerely believe, that under us *they are far more happy than they ever were under any other*, and that they conceive themselves to be

be governed by their own laws, in as full a sense of that expression as they could desire. But let not the reader be misled by this account of their condition. Although happier than before our rule, *they are not half so happy as we ought to make them.*

Let us now notice a few more of the objections made to our Indian Code by the author of the History of Mysore, and the changes proposed by him. It is truely alleged, that " the spirit of the English Constitution assigns to the mass of the people " an extensive controul over the exercise " of public authority; and that this spirit " pervades the whole body of its laws."— " That these laws naturally reflect back, " and reproduce the principles from which " they spring." It is also an undoubted fact, that " if this spirit of re-action were " ever to take place in India, from that " moment the country would be lost for

" ever."

"ever." But I really cannot see how such a spirit can be produced by the present Code of Jurisprudence, for we have in it entirely left out these fundamental principles which would have been so dangerous.

The Indian people have no more interference in the making of laws, than they had under their own despotic government. Nor have they a voice in the election of a single officer of Government. And what is more fortunate for us, they have no desire to in-interfere in these matters. The Indian, if he enjoys possession of his land, subject only to a limited rent, if he is allowed the quiet observance of his religion, will care very little who may be his governors.

The next objection lies to the use of the Mohummedan Criminal Law; and to this objection we must certainly allow its full force. Its adoption was, indeed, only a temporary expedient, and the time, perhaps, is

is now not far distant, when its use will be entirely abolished,—when its best feature only will be retained, Summary Justice.

The next objection, regarding the imprisonment for debt, has already been noticed; and I shall only further add, that I have never yet heard it treated as a grievance by the natives, and that the constant application which they make of it among themselves, shews, that it is to them a highly convenient practice. As a commercial people, indeed, one can hardly see how they are to live without such a practice. It must be allowed, that long confinement after a just account has been rendered of a debtor's property, is justly liable to the stigma of oppression and cruelty; still, when this has been abolished, an opportunity might yet be allowed to every one of attempting, by imprisonment, to extort from his debtor a just account of property known to be concealed. Perhaps, also, some punishment is

due

due in most cases to *the man who unthinkingly goes beyond his means*, and thus, perhaps, contributes to the ruin of another.

To this there succeeds an objection of far more consequence. Colonel WILKS says, that the "distinction of casts, which "is absolutely the keystone of Hindoo "law, has unfortunately either not been "recognised at all in our laws and regu-"lations, or indirectly treated with con-"tempt." Now, I never have seen the Code of Regulations made for the government of the countries under the Madras Presidency. I have, indeed, always understood, that, in principle it was a complete copy in forms and details, a concise abstract of our Bengal Code. If such is the case, the neglect of a first and ruling principle, namely, the respect paid to cast, is difficult to be accounted for. Our Bengal regulations teem with this principle. Wit-

ness

ness the law, that in religious matters, in marriages, in inheritance, they are to be ruled by their own forms. Witness the delicacy shewn to the testimony of those whose cast prevents their coming into our Courts. Witness the oaths being dispensed with to those of high cast. Witness the respect paid in civil, and even in criminal suits, to the relations of royal families,—to the Brahmins of Benares, &c. &c.

The next objection goes to the constitution of our Courts, to the introduction, as Colonel WILKS very properly calls it, of the "forms of Westminster-Hall" among our Indian subjects. And to this objection I should certainly be inclined to allow great weight. The reflections of the author on this head, though rather carried too far, are on the whole just. It is here that we have committed a fundamental error. Our principles, not our forms of justice, can ever be assimilated to those of England. And as it is

is evident that we have already introduced too much of English forms, so every addition in this respect only tends to make things worse. But on the subject of our present Code for administering justice in India, and its superiority, compared to that of England, and the reasons of such superiority, the reader will find more information in Chapter II. to which I refer him.

Regarding the introduction of Hindoo Judges and *panchaits* or juries, although we may certainly allow the truth of the observation, that their powers of discriminating between truth and falsehood, in native evidence, are very superior, yet that they could be made serviceable to the administration of justice in the present time, when corruption among the natives is at its height, may be very much questioned. We could not find men worthy of being trusted. It would also add to the present delay, so much complained of: for, not only would it be necessary

cessary to afford such proof as would satisfy the consciences of many instead of one; but if a revision of proceedings were necessary, if any thing of the nature of an appeal lay to the European Judge, these appeals alone would furnish him with a sufficiency of business. The natives (of Bengal at least), have no confidence in native Judges: For the proof of which assertion, we may look to the files of cases of appeal from almost every decision of a native Head Commissioner, and from the *Moonsifs* or petty Commissioners.

The objection grounded on the voluminous collection of laws is founded in fact; and an abridgement of these laws is yet a desideratum in India. To study the whole would take a lifetime; and with such a prospect before the young Bengal Civilian, it is not very fair to expect that he will enter on the study of them while in College, or in England. As the judicial duties of the ser-

vice

vice are now performed, the industrious working for their idle brethren, it is next to impossible, that when he has once commenced his career as a Public Servant, he should find leisure for the arduous task. He must therefore, pick up by degrees what he ought to know from the beginning. The Lectures on the Regulations have long ceased to be delivered in College. Among the other economical retrenchments, the prizes to proficients in a knowledge of the regulations and the prizes for Essays have been included in the proscription.

Government have lately offered a liberal reward for such high proficiency in the Sanscrit and Arabic languages, as shall enable those who obtain them, to consult in the original languages, the Hindoo and Mussulman law books. Would it not also be well to offer a reward yearly for the best Essay on subjects connected with the study of the Regulations and the administration

tion of justice and the police of the country, and these rewards to be given not solely to Collegians, but to any one in the civil service whose Essays should deserve them?

For this long discussion on the defects and advantages of our present code, I shall not ask the indulgence of the reader; for, in the present chapter it was absolutely necessary. We shall now proceed with the subject of evidence.

CHAP.

CHAP. VII.

CONTINUATION OF THE SUBJECT OF EVIDENCE. —PERJURY.—DIFFICULTY OF ITS PROOF.—FURTHER FACILITY OF ESCAPE DURING THE TRIAL. —POWER POSSESSED BY THE NATIVE OFFICERS OF OUR COURTS.—INTRIGUES CARRIED ON BY THE FRIENDS OF THE PRISONERS.—DIFFICULTY OF PROCURING EVIDENCE.—FURTHER OBSERVATIONS ON THE CHARACTER AND RULES FOR THE EXAMINATION OF INDIAN WITNESSES.

THE more general rules of evidence, as laid down in the English law, and which are observed in India, ought to be known to every Judicial Servant of the Company: And from these general rules he will seldom, if ever, find it necessary to depart. The

The young writer will find them very fully laid down in GILBERT's Law of Evidence, and more concisely and generally in BLACKSTONE's Commentaries, BURNS' Justice, JACOB's Law Dictionary, and in almost every Elementary Treatise. I shall not take up his time by an abstract from these works, although the intention of the present Essay (to serve as a manual for young Civilians) might seem to require it; because GILBERT's Law of Evidence is very justly described by Sir WILLIAM BLACKSTONE as "a work which it is impossible to abstract "or abridge, without losing some beauty, "and destroying the chain of the whole;" and because the other works are in the hands of every one. I shall only observe, that evidence should, in every case, be *the best that is to be obtained*: That on a trial it should be given *in open court*; but that this by no means prevents *a Magistrate*, (as in India is generally supposed), from privately examining witnesses: That to be a

competent

competent witness, it is only necessary that the person should possess *common sense*, —be of a *competent age*,—and of a *character not infamous*; and although on these last grounds of exception there have been many subtle arguments, yet, as Professor CHRISTIAN expresses it, "the English "Courts have endeavoured to let the objections go, rather to the credibility of "the witnesses than to their competency."

In India, where there are no juries, the Judges have to estimate the competency of the witnesses, as well as their credibility; and they will do well to regulate their conduct in this respect by that of the English Courts; for a witness unexceptionable, according to the Hindoo or Mussulman law, will not be found among a thousand. The evils of the Mussulman Criminal Code are in nothing more felt than in the matter of evidence.

 By

By the English law, kinsmen, ever so near, servants, tenants, &c. are admitted as good and sufficient evidence. By the Mussulman law these are entirely excluded, or little credit given to their testimony. Now, the evil consequence of this to society will be best shewn by supposing a few cases; And, first, That of a *dacoity* (or Indian night robbery.) Who, it may be asked, are so likely to be acquainted with the circumstances of the case as the kinsman and household servants of the person robbed? They alone are interested in remaining on the spot; and in *dacoities*, the rest of the villagers fly in the most cowardly manner. Next, let us suppose a case of private murder in a family. Who but the relations and servants in the house can be aware of the causes of quarrel between the parties? Who so likely to have seen the deed perpetrated? Such scruples ought always to be disregarded by the English Magistrate and Circuit Judge.

A woman's evidence, by the Mussulman law, is considered of little or noconsequence. Now we do not surely mean to allow, that GOD, when he gave woman as "a help meet "for man," deprived her of common sense, and yet this last, unless the character of the person be altogether infamous, is all that is necessary to form a competent witness. By our law, as well as by the Mussulman law, a person convicted of felony, or he who has stood in the pillory, is not deemed a competent witness, or at most has but little credit paid to his testimony. But this perhaps is not strictly founded in justice, and it is peculiarly inapplicable to the administration of justice in India, where the evidence of criminals is of such utility. In the opinion with regard to the evidence of criminals, I am supported by BECCARIA, who expresses himself, however, much too strongly. "How foolish is it," says he, "to reject the testimony of women, on account "of their weakness: How silly is it not to

"admit the evidence of those under sen-
"tence of death, as dead in the law: And
"how irrational to exclude persons branded
"with infamy, for in all these cases they
"ought to be credited, where they have no
"interest in giving false evidence."

I do not mean to say, that we ought to give the same degree of credit to the last description of persons; for certainly their regard to the opinions of the world, one of the greatest instigations to their telling truth, may be supposed to be much diminished. But I mean to observe, that were we to be equally scrupulous on this head as the English law is, we should lose many advantages. We should often lose the information of those best fitted to convict criminals, namely, their associates. And in a particular case, as for instance in a robbery or murder, where only a few of those implicated are apprehended, we should lose the means of apprehending and bringing the

the crime home to the remainder. Indian Judges have not often scruples on this head; but it would be better that a standard law permitted the use of criminals than that they did it as their own act.

Paying attention to the confessions of criminals, and making use of them as evidence, is attended with another great advantage, that it breaks the confidence which the members of a gang have in each other, and by keeping them in continual fear of detection, lessens greatly the number of their ravages. But this system of receiving information from prisoners has also its disadvantages, among which we may instance the danger of their revenging themselves on their accusers or their families, and their being made instruments of tyranny in the hands of the, *Zemindars*. The natives of India under sentence of death, shew by their conduct that there is a difference in their very nature, or rather, I ought to say,

 that

that their education and religious sentiments have such an effect on their actions as to make us believe that there really exists such a difference between them and all other men. They seldom shew any signs of repentance, and as seldom of grief, on quitting the world. This may, in some measure, be accounted for by their believing, (as almost all of them do), in Predestination.

The only wish of Indian criminals under sentence of death is, that they be well fed, and that they be revenged on those who have been the means of their being apprehended. How frequently, then, do we see them going into the other world, (of which, by the way, few of the Hindoos of the lower classes have any distinct idea), with a deliberate lie in their mouths. This I have seen, during my short practice, in two remarkable instances, which I have mentioned in the Chapter on the Native Character.

But

But if we can divest criminals of all interest, I should not scruple to recommend them as the best fitted to give information, and who, if they have a spark of good in them, will wish to atone for their offences, by benefiting society by their discoveries.

A weighty objection to the use of the Mussulman law of evidence, arises from the prejudices natural to the followers of Mahommed against those of another religion. To us, who are their rulers, they dare not openly confess these prejudices, but that they are inherent in their nature may be gathered from the daily remarks of a Judge in his practice, and from history, particularly the history of the establishment of the first Christians in India*, and from the

Accounts

* See the preliminary dissertation affixed to CAMOENS's "Lusiad."

Accounts of the Settlements of the English.* Their hatred to the Hindoos they often betray. Can these men be fit Judges on the life and death of a nation far more extensive, as well as far more respectable, than themselves? On the subject of the prejudices of sects or casts, BECCARIA has this observation: "The credibility of a witness may be effected by his being of a different sect, as he possesses not only his own prejudices but those of the sect to which he belongs." Does not this affect the natives in their capacity of Judges? The Mussulmans (though a fallen race) have lost nothing of their pride, but are forced to conceal it. They will at all times, when allowed, shew their authority to the multitude, by disputing with the Judges, and by cross questions and puzzling interrogations to the witnesses, will try to pervert their evidence

* See DOW, ORME, and the Abbé RAYNAL.

evidence to their own purposes. It may here be observed, however trite the remark, that the certainty of punishment is the greatest preventive of crimes; and that this certainty of punishment is much diminished by the constant interference of the two Codes of English and Mussulman law, on the subject of evidence.

Witnesses in India cannot possibly be considered on the same footing with witnesses in England. There (I mean in England,) there is an inherent love of truth and detestation of falsehood; there, we seldom meet with instances of perjury; but here, strange as it may appear, I do not hesitate to say, that there exists an almost *inherent love of, or inclination to, falsehood,** that we seldom meet with one who tells

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* "In England (says COLONEL WILKS, in his Re- "port on the Mysore) it is customary to believe a witness,

tells truth. It would appear, that if this is really the case, all evidence must fall to the ground, and it would become impossible to decide any cause whatever. We have indeed but one resource; we must decide from probability, or we must pick out the truth from among lies, and must not allow perjury in one circumstance to affect the credibility of the witness throughout his whole deposition. We must see how his story hangs together. After hearing a succession of lies, and convincing him that they are such, there is a faint chance that we may in the end get at the truth. In short, though the witness may have told many untruths, we must

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" witness, till he is proved to have perjured himself; " but here the reverse is the case, and a testimony is " doubted until proved to be true." This observation the author, in his History of the South of India, on further experience deemed too harsh; but applied to Bengal, I believe it to be very just.

must credit him where he has no apparent interest in prevaricating.

It must shock a European to be told, that there is *a system of management necessary;* nay, that a degree of cunning is required, in taking the evidence of witnesses in this country; but a little practice will convince him of the necessity of this. I shall therefore proceed to give a few hints towards the management of witnesses. In examining witnesses, we should never follow one regular mode; for the *Vakeels* about Court noticing this, will soon instruct them to tell their tale. We should be careful in looking about the *Kutchery* (Court), to see what persons are present during the examination of witnesses: who go out, and who come in. It would be well to have the witnesses situated at a distance from the *Kutchery;* but in sight of the Bench. The witnesses who in general are sent in, are men of low cast, and of no education. The

reason

reason of this is evident, they cannot afford to pay the *Darogas*, *Peons*, &c. as respectable people can do, to exempt them from the trouble and danger attending their going to Court. These poor wretches are easily intimidated, and may be made to say any thing; we ought, therefore, to be very cautious in our examination of them. From reading the *Daroga's* reports, and all the other papers in the case, we must have formed an opinion of the trial. If we have reason to suppose it founded on falsehood, and that the witnesses, either from relationship, or other connection with the parties, have any object in view in their depositions, we cannot be too full in our questions; because their tale will by this be overthrown. But if, on the contrary, we have no reason to suspect the complainant and the witnesses, we may remain content with the plain story, and not invalidate their testimony by puzzling questions, to which the best of them will, at times, give inconsistent answers.

In

In many cases, I would recommend it as a good plan, previous to writing down the depositions, to hear the witnesses tell their story from beginning to end; every one will, if left to himself, have a different way of relating the same fact, but if instructed, they will all use the same phrases, and you will easily perceive that they have been tampered with. Another advantage will be derived from this; you will be able to see the weak parts of the deposition; and should you suspect the whole, you will, by attacking these, easily overturn it. In cases where you suspect the whole, you will do well to hear his story fully from one of the prisoners, without writing it down, and this previous to examining the witnesses. If it hangs well together, you may make great use of it in afterwards examining the witnesses.

Where

Where witnesses depose to writings having taken place in their presence, as in *sooruthals*,* in cases of extortion of money, &c. you must insist on a full account of the manner in which such writing was taken. Nothing is more common than for the parties to finish a writing, and then seize upon two or three persons passing, or about the spot, and make them sign their names to what they know nothing of, or deceive them, by telling them it is a paper of any lighter nature, as a security or other writing. With the witnesses to *sooruthals*, you never can be too strict. Indeed, you will not err far, if you sit down determined to believe every *sooruthal* false, till it is proved to be true.

It

* *Sooruthal*, or literally, *state of the case*, means the inquest or investigation of a crime made, or rather supposed to be made, by the *Daroga* on the spot. These papers are very little to be trusted.

It is but seldom the *Darogas* take the trouble of going to the villages to investigate the matter themselves. They will do so where the cases and the purses of the parties are weighty; for it then becomes a grand field for the exhibition of their *hooner i zatee* (or official talents;) but their hearts do not so overflow with the milk of human kindness, nor is their love of justice sufficient to induce them to go in person to investigate the character of a poor criminal. The *Darogas* generally send a *Mohurrer* (a writer), a *Burkundauze*, or one of the innumerable dependents on a *Thannah*, named *Mootafuruka*. If the criminal is unfortunate enough to have incurred the displeasure of the *Zemindar*, (perhaps the sole reason of his confinement), his fate is soon settled. The *Mohurrer* or other person is well fed by the *Zemindar*; and the *Ryots* subservient to their lord, from the fear of sharing the same fate with the prisoner, give in their unani-

mous verdict, "*Budmaush.*"* You may insist at least on the *Daroga's* sending in respectable men, and so give the criminal some chance.

In all the *Zillahs* in Bengal, there exists, under the name of *Vakeels*,† and sometimes under no denomination at all, a set of men who attend on the *Foujdary* Court, entertained by the different parties implicated or concerned in the trials, whether prosecutors or witnesses. These men employ themselves in conducting the trials, but generally in an underhand way, and behind the curtain. With them the witnesses reside

* *Budmaush* means simply a bad character.

† These men are of infamous character, if you can discover any of their misdeeds, and get them into a scrape, you may expect more information from them respecting thieves, robbers, and other bad characters, than from any other persons.

side on their coming in from the *Mofussil*, and are put to school under them; they, therefore, come each day well instructed, and their instructors also attend, that they may countenance them, and give a daily account of the proceedings of their constituents. In some cases, the removal of these men may be of advantage; but I would not recommend this often to be done, for they may (under some restriction) be made very useful; but you should keep a very strict look out on them. Amidst the crowd that attends a Court, you may find it difficult to distinguish these men, as also the friends of the parties, who always attend. There are various ways of effecting this, which will, during your practice, present themselves. You may ask the party accused to look round the Court, and point out any one of the servants or friends of the party who accuses him; and, in the same manner, the opposite party will point out the friends of the prisoner: but on any investigation

 of

of this kind you will see the people in question retire behind the crowd, or leave the Court altogether. Keep this always in mind in examining the witnesses, as well as during the whole trial of a native, that you are surrounded by spies, that you must have all your eyes about you, and that, if you have not, the parties whose interest it is will deceive you.

You will, as I said before, seldom find that the *Daroga* sends in men of character or respectability as witnesses to a *sooruthal*, or to a confession: they are, generally, a few poor illiterate wretches whom he picks up passing by. Having brought them into his *Kutchery*, where the confession is commonly ready made, he merely asks the prisoner if this is his confession: He is instructed to say, Yes, and the witnesses are made to sign it, or the *Daroga* does it for them. Even if the *Daroga* is sufficiently condescending to explain and translate it to them,

them, he can do it in his own way. The witnesses have not heard a word of it from the mouth of the prisoner.

If you wish to get at the truth of a confession which you suspect, you may make the examination of the witnesses minute in the extreme, asking them separately and most particularly the circumstances attending it. If they have not been present during the time the confession was actually made, the variance in their depositions will shew it; for they seldom come prepared to to answer more than the simple question, Was this confession made in your presence? Or after hearing their depositions, you may (if the *Thannah* is near) send for the *Jemadar* or *Burkundauzes*, and by comparing their testimony with that of the witnesses, you will find whether the confession really was made or not. And here I must observe, that some degree of address must be used in sending for the *Thannah* officers. If the

purwannah (or order) runs in the common form, it will specify all the circumstances, and give the reasons for which the *Burkundauze* or *Jemadar* is called; in which case they will come well prepared to defend their master's proceedings and their own. Let the order, then, only summon the parties, or, at farthest, only mention the trial on which they are called, and examine the parties the moment they arrive, or as soon as possible, that they may not be too clever for you; let them be asked every single question that was put to the other witnesses, in the same order, and then compare their depositions.

The set of men generally sent in by the *Daroga* are so illiterate and timid, that a very few questions will easily disconcert them, and they will find it better to tell the truth at once. For instance, sometimes in cases where I suspected that the *prisoners* had been forced by maltreatment to confess,

fess, I have asked them privately who beat them, and getting the names, have called for a witness, and after preparing him, as far as it is possible, to speak the truth, I have asked him whether he beat the prisoner, or the others, mentioning those whom the prisoners accused; and on being thus taken by surprise, he has deposed that he did not, but that he knew that such persons (mentioning their names) had done so. These devices are not improper, considering the kind of people we have to deal with.

You will often find it a very difficult matter to procure witnesses, in cases of *dacoity* and murder, and you must employ your utmost skill and tenderness in bringing them to Court. In a district where *dacoity* is frequent, the horror and dread of the robbers is so great, that on sending into a large town even for a few witnesses, you seldom get them; nay, whole villages become empty, and the people will fly in different directions.

rections. The reason is evident; when a *Dacoit* gets off, his first step, in order to establish the terror of his name in the neighbourhood, is by means of his associates to take revenge on those unfortunate people who have been called in to depose against him. There are many instances of men who have murdered not only the witnesses, but their wives and children, where their own danger has been great, and their acquittal difficult. Is it then wonderful that witnesses often depose to the good character of prisoners known to be *Dacoits?*

In smaller cases, the *Dacoits*, either while in jail, or after their acquittal, pay people *to accuse the witnesses*, and by these means put them to trouble and expence. There is not a wretch, however low, that has not his neighbour in his power by these means. I have seen instances where a robber in confinement has written to a *Goinda* to make an accusation against the persons who

had

had given their testimony against him, or had apprehended him. The *Goinda* has sent in these men, accusing them of being *Budmaush* (suspicious characters), an accusation which specifies *nothing*, but leaves the accuser time to fabricate *any thing*. The men are, in the mean time, sent to jail. Where the press of business is great, you cannot take up the case for a few weeks, sometimes not for many months, and when you do, another month elapses in collecting witnesses. The prisoners are indiscriminately confined in one jail, amongst the lowest wretches, perhaps with their original accusers, who taunt and scoff at them. After a vain attempt to prove them *Budmaush*, by accusing them of being seen with, or even near a known *Dacoit*,—of having drank water at the same *ghaut*,—of having given his *hookah* to smoke to a passenger, which passenger was *the notorious such a one*,—or any idle tales of this nature,—the man is acquitted

quitted as innocent. Have not these wretches their complete revenge? The character of their enemies has suffered; for the natives always, and naturally enough, attach suspicion to the character of a man *who has once been in jail*. If he has been long confined, his family, in the mean time, has been left starving, or reduced to sell every thing they had to support themselves, and to pay the money necessary to his being well with the jailor, *Sipahees Aumilah*, &c. or his merciless *Dur-dur-dur-dur-putneedar*, or *Kotkinadar*, has seized on his property. Such is the situation of the accused. But the *Dacoit*, if he escapes, has by this one act regained sufficient power and terror to recompense him for his own confinement.

The practice of the *Aumilah*, in most Courts, is, on your proposing a question, to write it down first, and then put it to the witnesses. This, in cases of doubt, is attended

tended with much evil; for during the writing of the question, the witnesses are prepared to give a well constructed answer, and you lose the only chance you have of overturning the tale of a skilful Bengalee. It is easy to propose the question to the prisoner first, and then write it and the answer together, or propose it in Persian to the *Aumilah.* This last, however, is not a good method, when the witnesses are intelligent.

These precautions will be unnecessary in common cases, and certainly suggest bad precedents; but in more intricate trials, are often indispensable. In examining witnesses *to the character* of prisoners, particular attention ought to be paid to the manner in which the questions are asked. For instance, I have heard four witnesses depose to the *bad character* of a prisoner; but on examination, they could give no other reason for calling him *bad*, than that he was *confined*

confined on the present charge. It would be very unjust that evidence thus founded on the presumption of his guilt, in a crime which was then unproved, should go against him. Let them be asked how long they had known the prisoners, and during that time what bad acts they have heard them implicated in? How they lived? What men frequent their house? In short, let the examination be full, for I believe that as many are sent in by the *Zemindar* as *Surkush* (rebellious) *Ryots,* as there are really bad characters; and although the witnesses come prepared by the *Zemindars* to call them bad, yet they are very seldom prepared to give a perfect definition of their *budmashee*, or bad character.

In sending out *purwannahs* (orders) to *Darogas,* for witnesses, I would recommend the manner formerly mentioned, that particulars be not stated in the *purwannah;* this

this will in some measure prevent their coming in prepared.

The *Thannah Vakeels*, or others attending in Court, will, in every case, send *quicker information into the mofussil* (interior) than *we can*, and will often take care that the witnesses are out of the way. Your only plan in this case (when the trial is weighty), is either to remove the *Vakeels* altogether, or tell them that if a single witness is away, they will be suspected, or if you set the *Vakeels* of both parties to work, they will look out sharply enough on the conduct of each other.

Although when a trial is brought before you, you will seldom see more than the prosecutor and prisoners, yet you may depend on it, that either in Court, or behind the curtain, there are other parties concerned. If in Court, you will find them by their eager looks and gestures, or, as formerly suggested,

gested, you may apply to each party to point out the friends of the other. Besides these spies, you have many among your own *Aumilahs*, *Peons*, and private servants.

Although witnesses often give a man a bad character, because he has been once confined on a former accusation; yet it may happen that he has given up his evil practices, in which case he has shewn a resolution the most praiseworthy. A man who has been once confined, will ever be suspected in the *Mofussil*, and will be called *Budmaush*. How cautious, then, ought we to be in confining. Let the examination of the witnesses be minutely particular, as to the conduct of the prisoner *since his acquittal on the former charge*. After a prisoner has suffered the condign punishment of his crime, and has since changed his conduct, surely the former crime ought not to weigh against him. This would at once extinguish all

all hope that a criminal may have, of making up for past crimes by a new life.

It is frequently asserted by witnesses, that a prisoner was confined six or eight months on a former charge, and that in consequence of this, he has got a bad character. But do not forget to ascertain whether he was in the *Hajut-tujwees*,* or as a *Meadee*.† It does not, however, generally happen, and never but from some gross mismanagement, that the arrears of business are so great as to allow the occurrence of this circumstance.

When you see a complaint entered against any persons who are *witnesses in another trial*, be full in the investigation of the accusation

* The department in the jail where those under trial are kept.

† A sentenced criminal.

cusation previous to apprehending them; for this is a common device of the parties, to invalidate their testimony, and for this purpose they generally employ *Goindas*.

Do not be satisfied with the deposition of a witness who merely says the prisoner is *a Dacoit;* but always investigate in what class of *Dacoits* he is to be ranked. I have in another place mentioned the different degrees of guilt of the members constituting gangs.

When the witnesses in a trial are under the fear of being confined, and made over to the Court of Circuit, if they perjure themselves; of having their throats cut by the *Dacoits* if they depose against them; and, at all events, of being well plucked by the *Peons* and *Aumilahs* of your Court, how can you expect them to attend willingly, or to give clear depositions? To this we may add the fear of the oath. In *Zillah*

Nuddea

Nuddea, in 1809, in a case in which the prisoners had been acquitted, they immediately, on getting into the *Mofussil*, burned to death the mother and wife of one of the witnesses, who had deposed against them, and cutting down the witness himself, they dispatched him with their spears. The effects of such an occurrence, in all trials in that *Zillah*, were long felt, and for months not a witness would appear.

I have before remarked, that the natives in India appear to prefer falsehood to truth. We shall, however, have a better chance of getting at the truth, by devising means for their being kept separate, or at least not permitted to converse with each other, and compose the stories they are afterwards to tell us. When they are arrived in Court, the best step to take is to forbid their living with the *Vakeels* (or common native attorneys of the parties,) or to examine

 them

them immediately; and should we be obliged to interrupt the proceedings, we ought at the same time to dismiss those who had been examined, and prevent their interfering or mingling with the rest. It is almost impossible that they should deceive us, if they have not had an opportunity of making up a tale; and we may implicitly believe that to be true, in which two or three witnesses, who are unacquainted with each others depositions, who have had no previous conversation on the subject, agree. "When a number of witnesses, separately "examined, and who have had no opportunity to concert a plan beforehand, do "all agree in their declaration, we ought to "make no scruple in believing their testimony implicitly, even if we have no evidence of their honesty or skill, nay, "though they may be notorious for their "knavery or folly, because the fictions of "the human mind being infinite, it is im-

"possible

" possible that each of these witnesses, by " mere accident, should devise the same " circumstances."*

When an Indian witness has no interest in the case, we ought to give credit even to an imperfect relation. Among the lower orders of the natives, the understanding and the memory are both very limited; and there are many circumstances which may tend to confuse a witness, not only in delivering his testimony, but also at the time of the occurrence of the action to which he deposes. And in cases of *dacoity* particularly, we ought to attend to this.

Those who have been in Bengal must be well acquainted with the timidity and cowardice of the natives, and will not expect, that at such a time, they should preserve their presence of mind. " When we consi-

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* Beattie's Essay on Truth.

"der," says Fielding, "the extreme hurry "of the action, and the terror and consternation in which most persons at such a "time are plunged, how should we then "imagine it possible, that they should afterwards be able, with any certainty, to "swear to the identity of the thief or the "robber, whose countenance perhaps is "besides not a little altered by his subsequent confinement, and who takes care, "as much as he can, by every alteration "of dress or otherwise, to disguise himself?"

In cases of importance, where you may have reason to suspect the truth of the complaint, I strongly recommend separating the witnesses, and examining each in private. This cannot be done in a trial before the Court of Circuit, for there the witnesses must be examined in open Court, and their spies and agents will convey information of the evidence of each to the other; but I

mean

mean to recommend it to Magistrates, who, in India, in finding grounds for commitment go through almost all the forms of a trial. Its utility I have witnessed, particularly in the case of a gang of *Dacoits* at *Kishnagur*; the head of which is mentioned in the 5th Report, as having been apprehended at the distance of five hundred miles from the scene of the robbery. This notorious gang had been tried and convicted in Calcutta; but were sent up to *Kishnagur* to be executed near the place where their depredations had been committed. I had been with them on the night previous to their execution, attempting to get what information I could from them. On that evening they sent in a request to the Magistrate, saying that they wished to confess to him the particulars of a very celebrated robbery, in which the Company's treasure, proceeding to the Presidency, had been attacked and plundered. It had happened many years ago; but no traces had ever

been found of the robbers or their booty. In consequence of this request, the execution of the gang was delayed for one day, and its members were each examined separately in a room, by the Magistrate and his Assistants. Each story held well together in all its parts, when taken by itself; but on comparing them together, the conspiracy was evident. They had made the Sheriff of the Court, and the head native *Sipahee* officer, the principal actors in the robbery. But, before they were turned off, they confessed that they had been instigated to this by the bribes of a rich native, who, it was clearly proved, had a quarrel with those two men.

I cannot conclude the subject of native evidence, without remarking that the administration of justice would be much more perfect, were there no Court of Appeal from the decisions of the Circuit Court in criminal trials. It is absolutely impossible

that

that the testimonies of the witnesses, as read from a slip of paper, often carelessly or erroneously written by one *Moonshee*, and as often carelessly and erroneously read and accented by another, should ever have the same effect on a Judge as a *viva voce* evidence of the witness. This is more peculiarly applicable to Indian evidence; for there the credit attached to it, depends almost entirely on the manner in which it is given. Let us see what their own law says on this subject: "By *natural signs* let the "Judge see through the thoughts of men; "by their *voice*, *colour*, *countenance*, *limbs*, "*eyes* and *action*." "From the limbs, the "looks, the motions of the body, the gesticulation, the speech, the changes of the "eye, and the face, are discovered the internal workings of the mind."*

Where the Court of the Magistrate is the first tribunal for trial, and not for the mere

 commitment

* See Institutes of MENU.

commitment of the prisoner, although he passes no sentence, yet it is quite sufficient that there be one Court of Appeal from his opinion, namely, the Court of Circuit. In criminal trials, a Judge in India cannot abuse his powers. Besides which consideration, if sentence immediately follows after trial by the Court of Circuit, not as now after a lapse of many months, much fewer crimes would be committed. "It is of the "greatest importance that the punishment "should succeed the crime as soon as pos-"sible, if we intend that in the rude minds "of the multitude, the seducing picture of "advantage arising from the crime should "instantly awake the attendant idea of "punishment. Delaying of punishment "serves only to separate these two ideas, "and thus affects the minds of the specta-"tors, rather as being a terrible sight, "than as the necessary consequence of a "crime."*

From

* Beccaria "on Crimes."

From the difference of opinion in the Judges of Circuit and *Sudder* Court, and from the private pique or corruption of the native law officers of these Courts, much mischief is done in the *Zillahs* of Bengal.

I trust it will appear from the details in this Chapter, that under all the difficulties attending the trial of criminals, it is a matter of no small wonder, and deserving of no common praise, that the arduous duties of the judicial line are performed with success. That a new and comparatively complicated system of law with all the mildness of the English Code, has succeeded in reducing the scale of crimes, at least to the level it bore under a despotic and tyrannical government, armed with the never-failing weapon of summary justice,—has, at times, reduced it below this level, and promises much further improvement, while, at the same time, it has restored to the natives such a portion of liberty and happiness, as they

they never experienced under any other power.

Such I conceive to have been our Indian Code previous to some late innovations, or at least *such it may easily be made.* It would be very unjust, if, after mentioning so freely the defects which it appears to my imperfect judgment to possess, if I were to withhold from it its due praise. Its leading feature is, that it admits of *revision*, of *rescinding*, of *improvement*. And with these, it will ever be safer to make use of *it, than of any new code.* " A good patri-" ot, and a true politician (says a celebra-" ted writer*), always considers how he " shall make the most of the existing ma-" terials of his country. A disposition to " preserve, and an ability to improve, taken " together, would be my standard of a " statesman; every thing else is vulgar in " the

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* Edmund Burke " on the French Revolution."

" the conception, perilous in the execu-
" tion."

But the duties of the Judicial Line are too severe on the present small number that are entrusted with their performance.

We have more instances within these few years, of Civilians who have sacrificed their health to their zeal, than we ever had before. Something must be done, not only to remove this evil, but to afford some leisure, some time for improvement, to the young men *who are one day to rule the country*; at present they have not an hour for acquiring information. " They who
" always labour, (says the same author,
" who cannot be too often quoted,*) can
" have no true judgment: You never give
" yourselves time to cool: You can never
" survey

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* BURKE's " Second Letter to a Member of the
" French Assembly."

" survey from its proper point of sight, the
" work you have finished, before you de-
" cree its final execution : You can never
" place the future by the past : You can
" never go into the country soberly and dis-
" passionately, to observe the effects of your
" measures on their own objects : You
" cannot feel distinctly how far people are
" rendered better and improved, or misera-
" ble and depraved by what you have done :
" You cannot see with your own eyes the
" sufferings and afflictions you cause : You
" know but at a distance, on the statements
" of those who always flatter the reigning
" power, and who, amidst the representa-
" tion of grievances, inflame your mind
" against those who are oppressed. These
" are among the effects of unremitted
" labour."

This perfectly agrees with Lord TEIGNMOUTH's description of the defects of Indian Government before given.

CHAP.

MAHARAJA SERFOGI'S S... MAHAL. THE TANJORE

CHAP. VIII.

CONTINUATION OF THE CAUSES OF DELINQUENCY, —DEFECTIVE MANAGEMENT OF JAILS IN INDIA, —WHERE, INSTEAD OF IMPROVEMENT AND CONVICTION, THE CRIMINAL MEETS WITH ENCOURAGEMENT, AND THE BEST INSTRUCTION FROM EXPERIENCED TEACHERS IN EVERY KIND OF VICE.—SHORT TREATMENT OF THE REMAINING CAUSES.

I HAVE, I am afraid, already required more time and attention from my readers than I have any reason to expect, considering the very dry and uninteresting nature of my subject. I have nothing to plead in excuse except its utility; and of that they will only be able to judge when they shall have been some time in India. Among the causes which remain, however, there is now only one which will detain us, The Management of Jails. This is a subject of much interest to

to a good mind; and there is no quarter of the earth where so much remains to be done in improving the condition of prisoners. On this subject, I am afraid I may be considered as an enthusiast. I have, indeed, directed my attention, wherever I have been stationed, to it, in preference to any other; for I am convinced, that in an improper management of the jails, will be found one of the principal causes of delinquency in a *Zillah*. It is, therefore, most desirable that every Magistrate should on this subject be an enthusiast,—that he should make it one of his most favourite objects of attention; and in order that they may become interested in the condition of the prisoner, I would strongly recommend to my fellow Civilians, the perusal of such books on this subject as they can find, and more particularly the works of the benevolent HOWARD,* NEILD, on

* Patron of else the most despised of men,
Accept the tribute of a stranger's pen,—
Verse,

on Prisons—and Sir G. O. Paul on the same subject.*

In Mr. Howard's book, there is a great deal of detail, and less interesting matter, but nothing that does not merit an attentive perusal, and many sentiments which do honour to human nature. When once the

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Verse, like the laurel, its immortal meed,
Should be the guardian of a noble deed.
I may alarm thee, but I fear the shame,
(A prison chosen as my theme and aim,)
I must incur, forgetting Howard's name,
Blest with all wealth could give thee, to resign
Joys doubly sweet to feelings such as thine.
To quit the bliss thy rural scenes bestow,
To seek a nobler, amid scenes of woe;
To traverse seas, range kingdoms, and bring home,
Not the proud monuments of Greece and Rome,
But knowledge, such as only dungeons teach,
And only sympathy like thine could reach.

Cowper.

* Since publishing the first edition, I have been much instructed by a perusal of the two last works. They are the effort of minds devoted to the cause of humanity.

the heart of a Magistrate is interested on this subject, he ought privately, and with as little bustle as possible, to direct his inquiries to the state of his *Zillah* jail, and he will find enough to do.

Previous to entering on the subject of the abuses which prevail in Indian jails, a few general observations may be premised on the original intent of such institutions, and on the proper means necessary for accomplishing this intent.

In the first place, a Magistrate in India ought always to consider the situation of the different descriptions of prisoners in his jail, and not (as is very common), suffer them to be treated indiscriminately *as criminals.* He ought to consider, that, besides the sentenced criminals, he has in confinement those who are only *suspected*, and who have not even been examined by the Magistrate, but who, as they cannot find bail,

bail, have been sent to prison. Next he has those who have been *examined and committed*, but who are yet to be esteemed innocent, as they have not been tried by a competent court: and, lastly, he has *criminals sentenced*, but of very various degrees of guilt,—as the quarrelsome, the vagabond, the petty thief, the *habite and repute* thief, (as the Scotch law expresses it), the house-breaker, the robber, the murderer. He must consider, that all these demand different degrees of restraint and severity. These he can proportion to the circumstances of each case,—by the division of his prisoners into classes,—by keeping all unsentenced criminals without irons, —by the weight and numbers of the fetters,—by the degree and nature of the labours imposed,—and by permitting or depriving the prisoner of the little indulgences which he may desire,—such as the *hookah*, seeing his friends, receiving money and little comforts from them, &c.

 On

On the treatment of those who are only sent to jail because they cannot give bail, as well as those who are in confinement either before or after their examination, there ought to be but one opinion. The restraint in which they are held should be exactly proportionate to the danger of escape; therefore, except confinement within the walls of the jail, they should be subject to no other hardship: yet, how often, from carelessness on the part of the Magistrates, and avarice and corruption in the Indian jailor, do we see the degree of hardship proportioned to the length of the prisoner's purse? How often do we see the prisoners mixed indiscriminately? This all proceeds from the want of one reflection which ought ever to be present to the mind of a Magistrate,—That his jail, to a certain description of persons, ought to be a place *of mere restraint*, although to other classes a place of punishment.

With

With regard to the degree of severity which sentenced criminals ought to suffer, I shall speak more fully presently. But there is a description of prisoners whom I must not forget,—the debtors. It has been found necessary to the security of property and trade, that in India the punishment of imprisonment should be inflicted on debtors. This measure is said to be a disgrace to our laws. Whether it is or no, I am not inclined to dispute. I have given in another place, and I now again give my humble opinion, that to a certain degree it is necessary to a commercial nation like England, and necessary to the colonies depending on that nation. But the present question is not, whether a debtor ought to be confined or no, but how he is to be treated when in jail.

I trust, that in consequence of the humane exertions of Sir Samuel Romilly, Mr. Neild, and other enlightened philanthro-

pists, the old doctrine is now exploded, which maintained that a debtor ought to experience all the rigours of a prison, in order that "*squalore carceris*," &c. he might be induced to discover his last farthing. For a debtor, the punishment of confinement, though necessary, ought to be limited to a short time, and ought to be as mild as it can be made. It will still serve the purpose for which it is intended; for it will induce the sufferer to discover his secreted property, if such he has, and it will punish that thoughtlessness, and sometimes want of principle, which suffers a person to spend beyond his means, thus depriving others of their property. The period of confinement ought to increase with the amount of the debt, compared with the condition and means of the debtor; for by its amount in many instances, is certainly marked the criminality of those who thus trifle with the money or goods of others.

Debtors

Debtors ought, in every jail, to be separated completely from the other prisoners, and never to be suffered to associate with them, and unless where the debtors may have attempted to escape, they ought never to be in irons or (as I have often even seen), to have ropes about their legs; for an Indian jailor knows well how to make this last a most severe punishment to those who do not pay him.

Let us now proceed to the more methodical treatment of the subject of Indian jails; for which purpose, we shall divide the subject into the consideration of the following points,—their situation,—their plan and form,—their management,—and the various existing abuses, with their remedies.

In most of the districts in the province of Bengal, and indeed all over the country, there are jails already built, and as long as these are found to answer tolerably well the

 ends

ends intended, it is not to be expected that Government will consent to the expence of building new ones. It, therefore, becomes unnecessary to enlarge much on the subject of the proper situation or plan of jails.

As water is so very essential to the comfort and even to the very existence of the natives of India, both for their daily ablutions, and for drinking, it need scarcely be observed, that the most proper situation for a jail will be, where there is a good supply of that article. The vicinity, however, of a running stream, *nullah* or river, possesses many advantages over that of any other piece of water, as, by its means, the filth and nastiness which attend the confinement of multitudes of the poorer classes of people, may most easily be removed.

The house immediately inclosing the prisoners ought, when it is possible, to be built on a small eminence; so that the top of the outer

outer compound wall will not be much above the level of the floor in the first story; by this simple construction, the air, which is commonly obstructed by the high walls, will pass freely through the different wards.

To contribute to this object also, the jail ought to be built on arcades.

Another great advantage noticed by Mr. HOWARD, attends this last construction. The passages formed by the arches leave a good dry walk for the prisoners in rainy weather, and escape is rendered much more difficult, as, even in the event of the prisoners undermining their walls, they can still only arrive at the passage, and their operations are there manifest. The practice of undermining is by no means an uncommon method of escape, and is rendered still more easy in India, by the facility of obtaining tools afforded the prisoners, by their meet-

ings with their women and friends, which it is next to impossible to prevent. There are many convenient forms in which a jail may be built; but in India, where they are chiefly used as receptacles for working criminals, that construction seems the best where the eye of the keeper can at once command a view of the whole. This will also be found the safest, as at any time he may know what is going on among the prisoners, and prevent meetings and conspiracies.

The Plan of the Allipore Jail is in many respects an excellent one. The wards form three sides of a square. The plan of this jail, and its internal management, reflect much credit on those concerned, and particularly on Mr. Eliot, who has had the superintendance of it; but it also has defects. Its situation is very low and damp, and the house of the jailor, instead of being placed in the centre of the fourth or open side of the

the square, is placed over the gate, and the view is obstructed by the wards immediately opposite to it. Except of these wards, the jailor has no view of any part of the building. The jail has two entrances; the removal of the back one would add much to the strength and security of the place. And here it may be observed, that this is the point in which most of the jails in India are faulty; for if the chances of escape are in proportion to the facility in corrupting the guards, (and, in that country, it may fairly be said to be so), then this last will increase with their numbers. If, then, there are six or eight doors communicating with the open country in one jail, and only one in another, the facility of escape will be six or eight times as great in the one as in the other. In *Zillahs* Nuddea, Burdwan, Moorshadabad, Midnapore and Nattore, where the writer has seen the jails, these defects are manifest, and they have in

many

many instances been the cause of the escape of prisoners.

In all jails there ought to be some cells of particular strength, and even of gloomy and dismal appearance; though never devoid of the common comforts, as air, bedding, &c. These will at times be found very requisite for refractory prisoners. There ought also to be a great number of wards, as the prisoners may be divided into many classes, differing in guilt, and the bad effect of example be prevented.

When the jail is in the vicinity of a *nullah*, the plan adopted by Mr. ELIOT in the Allipore Jail, for cleansing it, deserves particular attention; and this plan might, with some slight alterations, be adopted in all jails, where there is water near at hand.

Within the compound, there is a large *pucka* (brick built) reservoir, marked A, which

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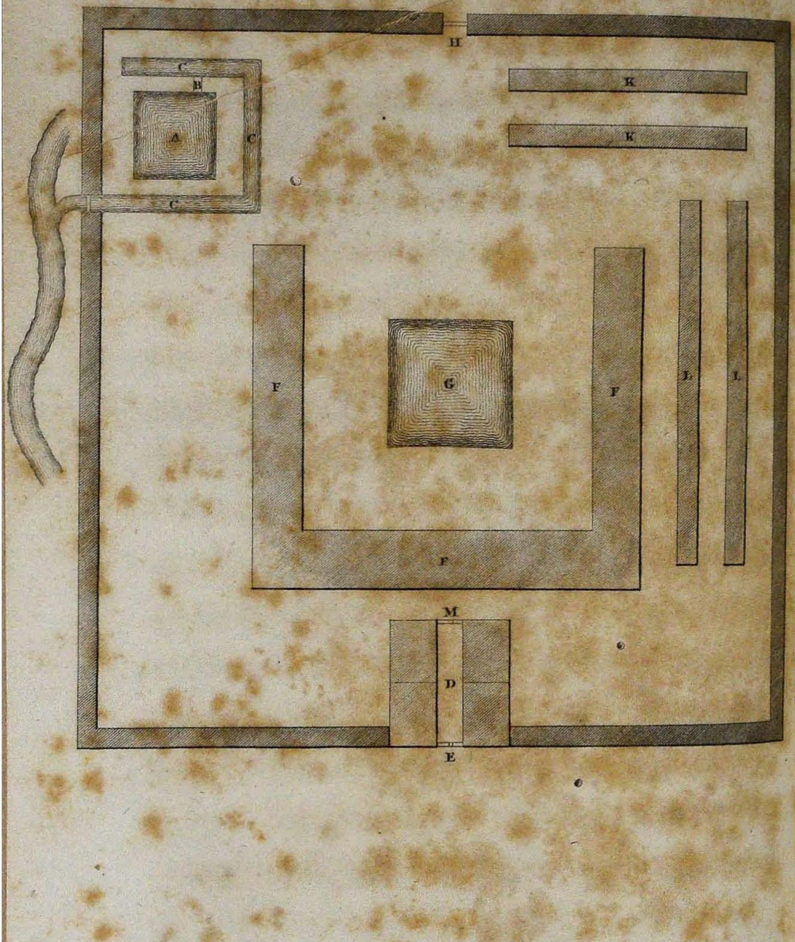
PLAN OF THE ALIPORE JAIL.



which is every morning filled, by means of pumps, communicating with the *nullah*. In the corner of the reservoir there is an outlet, with plugs, marked B; and a sluice communicating with a deep drain C C C, which joins the river or *nullah*.

The prisoners, after washing themselves in the reservoir A, are sent to relieve nature, to the drain CCC, across which boards are placed. When this is finished, they again return, and having washed in the bason, the plugs are opened, and the rush of water carries every thing away into the *nullah* Sweepers are then employed, and the whole is well scrubbed.

How much better is this than the common, yet shockingly indecent and dangerous method of allotting a piece of ground to this purpose I say dangerous, for, independent of the consideration that it is injurious to the health, escapes are not unfrequently effected

fected in the hurry and bustle attending such arrangement.

In the above plan, D represents the passage above, which is the jailor's house, and E the gate of the jail; F F F the wards, and G a large tank of good water, which is strictly guarded, and from which only the water for cooking their victuals, and for drinking, is allowed to be taken. K K are sheds for cooking; and L L are arcades under which the men work. The opening at M is a small wicket, admitting only one person.

A jail should never be built in the vicinity of a town or *bazar*; not only because those convicts who are sentenced to close confinement ought never to see any thing except the dreary walls of their jail, but because in the neighbourhood of a town or *bazar*, there will be no possibility of preventing

venting their constant meetings with their women and friends, when this is dangerous, and their obtaining many comforts and luxuries, which would be improper.

Prisoners, although they ought not to be oppressed beyond what they can bear, or to be treated with cruelty, ought yet to feel the striking difference between their present condition and former lot, when they enjoyed their liberty. For this reason, their food, though sufficient and wholesome, ought never to be luxurious, nor ought they to find that money will procure them every comfort. In this case their confinement will be to no purpose; and yet, from the venality of the officers of the jail, and the guards, there is not one of them who may not live like a prince, if he can pay like one; the strictest vigilance will be therefore necessary to prevent this.

When

When there is only one entrance to a jail, the management of the guards will be easy. They ought to be of different interests; and a mixture of *Sipahees*, *Burkundauzes*, and *Peons* (especially when there are one or two of these last mentioned attached to the person of the Magistrate), will be found the best. They will not so easily unite in taking money, or conniving at escapes, or conspiracies in the jail.

And here I may observe, (though by some it may be thought a harsh remark, when applied to the whole body,) that the Provincial Corps, who are generally employed in guarding our jails, are destitute of all principle. This my own short experience has repeatedly shewn me; but it is scarcely to be expected, that men constantly employed among, and in many instances associating with, such infamous characters as are in jail, should be other-

wise.

wise. They are ever exposed to temptations.

To prevent the prisoners rushing out in a body, several gates, one within the other, and having narrow wicket doors with turnstiles, as recommended by Mr. HOWARD, will be found useful.

Having said so much on the situation and plan of jails, it will now be proper to make some observations on their internal Management.

INTERNAL MANAGEMENT.

The *Aumilah* allowed by Government for the management of the jail, are seldom more than two or three: The head man (jail

(jail *Daroga* or jail *Jemadar*), and his under servant (*Naib* or *Bukshee*). The salary is small; the *Jemadar's* seldom exceeding sixteen or twenty rupees per month, and the other ten or twelve. In most jails, however, they contrive to keep under them several servants, who style themselves *Chabeeburdars*, *Duffadars*, and the like. How they can afford to keep them will be seen hereafter. These are the men who *appear* to have the management of the jail; but under them are *the actual managers*, who are selected from among the prisoners themselves, and have their titles and distinctions: They go by the name of *Sirdars*, *Chabeeburdars*, *Mundils*, &c. the term differing in different jails. These are distributed in the wards, according to the number of prisoners. The duty of the *Sirdar* in each ward is to distribute the *cowries** to the prisoners,

—to

* The daily allowance in India is given out in *cowries*

—to attend to the cleanliness of the ward, —to settle all disputes,—and, in many jails, to keep the keys of the ward.

To a European, the prisoners themselves being entrusted with the keys of the ward, must appear, no doubt, a very singular constitution; yet this is actually the case. They have, consequently, a great deal of influence on the body of prisoners in the ward; and as the jailor, whose creatures they are, generally arms them with full authority, and even with the instrument of punishment, (a cane), they are by no means insignificant characters in the jail. By having these *Sirdars* under controul, the *Daroga* may do any thing with the prisoners; and they can easily manage this, by making the situation of

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ries or shells, in order that they may with ease purchase the exact quantity of victuals necessary. These are sold by the *Modees* or chandlers, who attend with their baskets daily.

of *Sirdar* lucrative as well as comfortable. A good *Sirdar* will generally be found fat and sleek,

"His fair round belly with good capon lin'd."*

With a pair of irons round his legs, but these of a delicate make, and a cane in his hand, he does no work himself, but lords it over the other prisoners with a rod of iron, when they cannot pay him. Under these *Sirdars* there are other lesser *Sirdars,* allotted generally in the proportion of one over each twenty or thirty prisoners, according to the pleasure of the jailor. These have the management of the prisoners when working on the roads or elsewhere,—

* In the case tried at Nattore, when Pundit Sha escaped from jail, it was found, that these *Sirdars* had, in concert with the principal prisoners, monthly feasts, when fatted fowls, kids, &c. were sent in by their friends from the *mofussil*! ! !

elsewhere,—allot them their tasks,—and guard them. They are vested by the jailor with the power of punishing the prisoners under them.

In the management of Indian jails there are some other characters, whose existence may surprise the reader,—an *ijaradar* (or farmer), with his *mal zamin* (security), a *gomashta* (or agent), and *paicks* (or messengers). The farmer farms the allowance of *cowries* made to the prisoners, at a certain *jumma* (or rent),—enters into an agreement with the jailor for it,—takes a *pottah* (or lease), and executes a *kubooleut* (or counterpart agreement). It is to be hoped that this does not always occur; but that it has occurred often, and been often detected, there is no doubt.

In 1808, several of the prisoners entered a complaint against the jailor of *Zillah* Nuddea, accusing him of many acts of tyranny

 and

and oppression, and, among the rest, of farming their allowance. In this case, it was clearly proved, that the *ijara* was taken by one of the prisoners at 100 rupees per month, and a *pottah* and *kubooleut* were made out and signed in the usual form. On the farmer's falling forty rupees in balance, the *ijara* was taken from him and given to another. When we consider, that this enormous profit was expected by the *Daroga* from the clippings of an allowance, already sufficiently small*; and that, in addition to this, the farmer must have had his own profits, it will appear almost incredible, and will shew to what a pitch these unfeeling wretches can carry their cruelty. The mere statement of the fact, viz. that, out of 2400 rupees a month, a profit of 100 rupees could be afforded to the jailor, will excite wonder.

* Each prisoner had then only three puns a-day, or one rupee six anas six pice per month, which, for 1700 prisoners, amounts to about 2400 rupees per month.

wonder. It is, therefore, proper to shew the manner in which such immense gains are made.

The number of shells or *cowries* which go to a rupee, fluctuates continually. The farmer takes advantage of this, and purchases them in large quantities when they are cheap, but gives them in exchange to the prisoners at one uniform rate, and that the highest to which the market price ever attains. As this currency is confined to the jail, and the same cowries or shells pass repeatedly through his hands, and those of the chandlers, and are not suffered to go into general circulation, as long as they are an accredited medium between the farmers, the prisoners and the chandlers supplying the jail, it is no matter what their intrinsic value is; therefore, the farmer purchases that mixed species of *cowries*, which, from being small and broken, will bring only a small price.—These he gets cheap, and,

 for

for his purpose, they are as good as others. Add to this another source of gain, arising from his cheating and defrauding the prisoners by false accounts, and by taking from their allowance on false pretences; and it will no longer be matter of surprise, that so large a premium should be paid for this farm.

The abuses which prevail in the jails in this country, and which it will be the duty of the Magistrate to check, will be best seen by taking a view of the sources of profit to the jailor and his servants. The principal of these oppressions are practised on the new comers, who pay well for *their initiation into the mysteries of the jail.*

If the prisoner be at all respectable, (and, compared with the low wretches with whom the jail is generally filled, every new comer must be respectable), he is asked what are his resources, and whether he can

pay

pay for indulgences. In the hot season, by crowding a great number of prisoners into the same ward, and putting a new comer among them, his situation will be rendered sufficiently miserable, and he must pay for release.

Another is accused by one of the jailor's creatures, a *Sirdar* or *Chabeeburdar*, of planning an escape:—a search is made, and in the bedding of this poor wretch is found the knife, chisel, or other instrument, which had been placed there. He must now be punished by the *Daroga*, sent into Court, *or pay*.

While in the ward allotted for those under trial, called the *hajut tujweez*, the prisoners are generally kept with ropes on their legs. These can be made sufficiently short, to render their situation painful and inconvenient. But their length will be

found to increase in the same ratio with the prisoner's means.

The small allowance of *cowries*, as before observed, is curtailed; and a prisoner receives nothing *the day he is confined*, and *the day he is released;* but these are both charged to Government. In the case before mentioned, which was tried at Nuddea, it was proved, that one whole day's allowance was curtailed every month; and consequently, the prisoners who had saved nothing during the month, must that day starve.

When a respectable native comes among them, he is desirous to eat by himself, or at least at a distance from the wretches around him, who are of a different cast; and for this he must pay. We all know how very particular the natives are about eating; and no one knows better than a jailor how far they carry their prejudices, and how to take advantage

advantage of this, by mingling or keeping the different casts asunder.

When a prisoner's attendance in Court would injure his cause, as, for instance, before the witnesses who have come in can be talked over; also, if he is to be punished, and even when he is to be transported, it often becomes convenient to the jailor and native doctor to send him to hospital, and report him very much indisposed: for this he must pay.

The different kinds of work afford also a grand field for the exertion of the jailor's abilities. Generally the prisoners prefer working in the gentlemen's gardens; but if any one observes how often they are exchanged, he will soon discover, that for this also they must pay.

The

The weight and length of the irons are of course an excellent testimony of the opposite qualities in the purse.

The indulgences of having victuals from the *mofussil*, and of seeing their friends, are, perhaps, the sources of more gain than any other; for at the time these arrive, the prisoners have also supplied them the means of paying for those indulgences supplied by their friends, and the exchange is immediate.

During the trial of a prisoner, and more especially during the Circuit, the gains to the jailor and his *myrmidons*, who are all animated by the "esprit de corps," are very great. These arise from what is called *chittee burdaree* or the sending of letters into the *mofussil*, from allowing the prisoner an interview with his friends, with *Vakeels* (numbers of whom are always ready to conduct his cause), and with the witnesses. It is at this time a man's whole resources are called

called forth; and his family never fail to assist him. Instances of this would appear every day, were it not the interest of the parties to conceal them; and vile as the character of the Bengalee is, they have got that one good quality of affection in a degree that would scarcely be believed. A whole family will sell all that they possess, and starve themselves, to assist one of its members who is in jail. How hard, that the small pittance of these poor wretches should fall into the overloaded pockets of the *Aumilah* about our Courts. The relations of the prisoners will do any thing to get at them. Instances have been known, of women losing all regard to cast, and coming as *fish-women*,* and in other characters, to sell things in the *bazar*, which is often held before the jail. This practice of having a *bazar* near the jail, is a cover for many abuses,

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* The fish-women in India, as all over the world, are of the very lowest classes.

ses, and ought never to be encouraged, In many jails, the practice is still kept up of having temples of Cloacina within the jail; when this is the case, a new field of oppression is laid open :—it is a rich one ;—but delicacy, which has been, perhaps, too little attended to already, will forbid our encroaching further on this subject. It will be sufficient to observe, that the state of these, as well as the general cleanliness of the jail, will be best in those wards where money is the most abundant. Many are the perquisites gained by the sweepers, and by the jailors in their name.

In the trial after the escape of *Pundit Sha*, a very notorious criminal before mentioned, it was clearly proved, that those whose nerves were tender, and their resources small, were obliged to pass their first nights in those disgusting places. The practice of crowding the prisoners in the hot weather, and excluding the air, is reversed

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in the cold season, when the air is admitted, and no blankets given till paid for, *though allowed by Government*. False weights are also often used by the *Podar* and *Modee*, with the connivance of the jailor.

These are but very few of the abuses existing in our jails; attention to their management on the part of the Magistrate, will find out many others. When the abuses are found out, the practical experience of every one will suggest the proper remedies; and it will be unnecessary to enlarge much on this subject.

The number of prisoners in each ward should be fixed by the Magistrate, as well as the description and class of prisoners attended to by him. By this means, one source of oppression, by which the more respectable suffer, will be removed, and the young, as well as less criminal prisoners, will not suffer from the bad example of the older

older and more hardened offenders. Let the Magistrate reflect, that his jail is the school which, under bad management, *sends out leaders for the different gangs of Dacoits in his Zillah*, or at least substitutes and subsidiaries to recruit them.

Sir JOHN FIELDING says, " A criminal " discharged, generally by the next sessions " becomes the head of a gang of his own " forming." And the excellent author of the Treatise on Prisons (Mr. HOWARD) has a very just observation on this subject: " Petty offenders, who are committed to " Bridewell for a year or two, and spend " that time not in hard labour, but in idle- " ness and bad company, or are sent for " that time to county jails, generally be- " come desperate, and fitted for the per- " petration of any villainy." How directly contrary to the intention of our laws with regard to these offenders, which certainly is to correct and reform them. " Instead " of

"of which, their confinement does most "notoriously promote and increase those "very vices it was intended to suppress. "Multitudes of young creatures, commit-"ted for trifling offences, are there ruined "for ever."

There ought in every jail to be a separate ward purposely for very young and less culpable offenders; and the Magistrate should be cautious of ever committing to jail, when a fine, or even a slight corporal punishment will be sufficient.

The length and weight of the irons, except in cases when the Magistrate *may expressly order it otherwise, should be the same all over the jail*,—also the length of the ropes with which the prisoners under trial are bound. It is by no means uncommon for the jailor to put on (the first day) a pair of heavy and newly made irons, so that the prisoner's legs are wounded, and he pays for

for their removal, and for his being sent to the hospital. If the period of confinement is for a very short time, the half of it is thus spent in the hospital, where the prisoner is well fed and attended to. By requesting the punctual and frequent attendance of the surgeon at the station, the above practice in the hospital may, in a great measure, be checked.

The *Podar** alone ought to be entrusted with the distribution of the *cowries* to the prisoners, and not the *Sirdars* under the jailor. The *Podar* ought to be a man of respectability, and should give ample security for his good behaviour; and an inspection of his accounts, at times when he shall not expect it, would be attended with good effects, especially when the prisoners have been

* The *Podar* of a jail, is a person who attends with money and *cowries*, who gives change, tries rupees, &c.

been sounded privately on the subject of the existence of abuses. Timid as they are, I never saw an instance, in which some pains, and the promise of protection and mercy, would not make them come forward with information.

The Magistrate ought always to receive the complaints of the prisoners, and attend to them, even when they may be frivolous. He ought to be very cautious in punishing false complaints among them; for by this he will lose his best sources of information regarding the state of his jail. The prisoners ought even to be encouraged in presenting these complaints. This practice will keep the jailor and his servants in awe. Occasionally a deposition might be taken, either publicly or privately, of one of the chief prisoners, on the subject of the abuses of the jail, and the Magistrate might make use of this as the ground for an accusation, in

in which the Company's *Vakeels* should prosecute, and the depositions of prisoners and others be taken to confirm the statement. Even in the event of the jailor's innocence being established, the investigation would be of great service, and lay open many scenes before unknown to the Magistrate, and the expectation of such inquiries would keep the jailor in continual fear. But when such inquiries take place, the Magistrate must be particularly careful that the jailor does not take his revenge on the prisoners who are examined.

The visits of the Magistrate to his jail should never be at stated times, and should be kept secret. When he does go, the jailor and his officers should be removed, and one of the Magistrate's servants take the keys. Spies on the conduct of the jailor will also be found useful; but they must not be encouraged in contriving idle stories.

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A formal attestation should be given in by the jailor and native doctor, whenever a man is reported sick; and when it is practicable, the sick person should be sent for, or inspected by the surgeon.

The different kinds of work ought to be allotted *by the Magistrate* to the different classes of prisoners, and when his time will allow of it, he ought occasionally to inspect their work. This will not be difficult when the work is confined to the jail, or consists of road-making near the station. It will prevent the prisoners being constantly changed from one kind of work to another, at the caprice of the jailor, who makes the practice a source of gain.* The work will be

* It appears from HOWARD, that the jailors of our own country are not unacquainted with this method of making money. "A marked distinction," he observes, "should be made in the different kinds of work allotted "to the prisoners, and that not by the jailor, but by the "Magistrate, as the former will sell these distinctions "which ought to be proportioned to merit."

be better done, and double the quantity, by prisoners who have been long accustomed to it, than by new hands. And here I would recommend, that where there is no danger of the work being spoiled, by being quickly done (for instance, in road-making), a set task might be allotted to the prisoners every day, and they be allowed to return to the jail as soon as their work is finished. This plan I have seen adopted in *Zillahs* Nattore and Nuddea with good effect.

The Magistrates ought to be particularly attentive how, and where the witnesses and prisoners are kept during a trial, and when the Court of Circuit is sitting. This season is the most lucrative for the jailor, who, on being well paid, will allow the prisoners to see their friends from the *mofussil*,—to talk over the witnesses, and, by means of the petty *Vakeels*, and other bad characters about the Court, the prisoners will contrive to make the

the case have a very different appearance from what it had before the Magistrate.

The excellent and cleanly plan adopted by Mr. ELIOT in the jail at Allipore, might with some slight alterations be followed in most jails; and many other arrangements promoting cleanliness, might be made by the Magistrate. When his visits are at all frequent to his jail, it will be a matter of some consequence to study his own comfort and safety, if he has no other reason for making such arrangements. The abominable stench and filth attending many native jails and hospitals, are, of themselves, the cause of most of the diseases contracted by the prisoners in these places.*

* "At the assize held at Oxford, in 1577, called, "(from its fatal consequences), the Black Assize, all "who were present died within forty hours, the Lord "Chief-Baron, the Sheriffs, and about three hundred "more. This was in consequence of the disease brought "in by the prisoners."

Particular care should be taken by the Magistrate, that the first appearance of the small-pox, or any other infectious disorder, be immediately reported; and those infected ought to be removed to a separate house, as their removal to the hospital will but endanger the other patients there, very few of whom, it is probable, have had that disorder.

The clothes and blankets allowed the prisoners should be distributed in presence of the Magistrate, or one of his Assistants; and the weights by which the rice, &c. are weighed, should be examined by them.

The Magistrate should take particular care, that the allowance of the prisoners be not *farmed* by the jailor or his dependants, and that they have no understanding with the *Podar* or *Modee*. The house of the jailor should be close to the jail. The treatment of the jailor should be equal to all prisoners,

prisoners, except when the Magistrate orders it otherwise.

The precautions recommended by Mr. HOWARD, of washing with lime-water, and scraping every ward in the jail, at least once a month, as well as those of sprinkling with hot vinegar, and having the rooms clean swept every day, ought never to be dispensed with.

The walls ought always to be kept white, by means of lime; and the prisoners should never be allowed to sleep close to them, so as to leave the greasy marks of their heads on them. Nothing looks worse than this in a well-managed jail, and yet nothing is more common.

The prisoners should never be allowed in India to remain in the day-time in the wards where they sleep at night.

Rewards and immunities should be distributed by the Magistrate alone, and in his hands they might be made an instrument for the improvement of the prisoners.

At the jail at Hanau, in Germany, the prisoners are divided into two classes, called *honnêtes* and *deshonnêtes*. Their privileges are distinct, and there is a rise from the one to the other, and this affords encouragement to industry. In *Zillah* Tipperah, the prisoners who behaved well had their irons taken off, and they not only worked better, but instances of escape were very rare.

Condemned prisoners, who, in general, (but more particularly in India), throw off all reserve, and, by relating their adventures and success, encourage young offenders, ought to be most effectually separated from the rest. It is wonderful, in India, with what

what coolness these wretches prepare for death, and with what light hearts they pass their time previous to it. The writer of this was a witness to a scene of this kind in the *Zillah* jail at Nuddea, which he has already related, but which is of importance in this Chapter. The night before the execution of five notorious *Sirdar Dacoits*, he went to visit them: they were entertaining their companions with an account of their adventures, and cracking jokes. One of them, *an old Hindoo*, offering his *hookah* to his next neighbour, *who was a Mussulman*, assured him, that cast was of very little importance, and that he might take his last smoke, as they should all meet at Jehunnumpore (hell) next day.

And now, having given these hints, in which there is, perhaps, nothing new, but which cannot be too often enforced, on the subject of jails, I shall add but a very few observations.

It

It is an opinion which, however barbarous and inhuman, I have often heard supported, That jails ought to be miserable buildings, and their inhabitants wretched, to deter others from committing those crimes which have brought the prisoners there, and that the less care that is taken of them the better. To appeal to the feelings of those who entertain such an idea, would be a vain task. Let them, however, recollect, that the example of prisoners kept in a state of restraint and of hard labour is of infinite service, and on this account, their death or sickness is not to be desired. A jail will, under any circumstances, be a melancholy place of abode. We ought, however, to prevent its having the character given it by Dr. JOHNSON, when he says, "The misery of jails is not half their evil; "they are filled with every corruption "which poverty and wickedness can devise "between them, with all the shameless and "profligate enormities which can be pro-

"duced

"duced by the impatience of ignominy,—
"the rage of want,—and the malignity of
"despair. In a prison, the awe of the
"public eye is lost, and the power of the
"law is spent,—there are few fears,—there
"are no blushes,—the lewd inflame the
"lewd,—the audacious harden the audaci-
"ous,—every one fortifies himself as he
"best can, against his own sensibility,—
"endeavours to practise on others the arts
"that are practised on himself, and only
"gains the kindness of his associates by
"similitude of manners."

I shall conclude these observations with one more quotation from the excellent work of Mr. Howard. "With respect to the "more humane treatment of the prison- "ers, in the articles of food, lodging, and "the like, I venture to assert, that if to it "be joined such strict regulations in pre- "venting all dissipation and riotous amuse- "ments, as I have inculcated, confinement "in a prison, although it may cease to be "destruc-

"destructive to health and morals, will not "fail to be sufficiently irksome, more especially to the idle and profligate."

If the above description of a prison by Dr Johnson be true as applicable to English jails, allowing that these evils increase in the exact ratio of the numbers confined, how serious a consideration ought the state of a prison to be to a good Magistrate, in a country where, from a necessity at present unavoidable, each *Zillah* jail must contain on an average, three times as many prisoners as an English jail; and where, in times of more than common delinquency, (as in the years 1809 and 1810), some of the *Zillah* jails contain from a thousand to seventeen hundred prisoners. The *degree* of depravity to be expected in an English and an Indian jail is much the same. In India, drinking and gambling are less common in the jails; but the heart not only gets hardened by the society of old offenders,

fenders, but every better feeling is lost in the shameless intermixture of the *casts*; for it is, perhaps, the only beneficial feature in this institution, that it prevents an individual from learning any vices except those which belong to his own sect. From a knowledge of the habits and customs of others except in jail, he is entirely excluded.

The next cause of criminal delinquency is, "the hope of escaping detection altogether, from the defects of the Police,— "the carelessness of some Magistrates, and "the corruption of the *Darogas* and other "officers of our Courts" On these evils it will be altogether unnecessary to enlarge, because their enumeration, and their remedies, are the principal subjects discussed in the foregoing Essay. But on one of these evils, the carelessness of the Magistrates, we ought by no means to confound the innocent with the guilty. Many, nay, most of

of the Magistrates in India, are zealous and industrious. This is more particularly the case now, since Government have altered their policy, and employed as Magistrates men rising in the service, who have a name as well as a fortune to make, instead of those old Indians, who, from bad habits or independence, have become careless and apathetic. Of this last description, however, a few yet remain; and among the young Magistrates there are a few determinately idle, who certainly should be removed. Of all the situations in the Company's Service, that of Magistrate is the one to which interest and partiality ought never to permit an appointment. An indolent Collector, an indolent Commercial Resident can do little harm,—but an indolent Magistrate is the ruin of thousands, and the cause of immense expence to the Company in the end.

The three remaining causes are, "The "existence of drinking shops:"—"The "press

" press of civil business, and too much attention to forms and details:" And lastly, " The indefensible nature of the native " houses."

On the first of these I shall say a few words. The drinking of spiritous liquors is altogether forbidden to the natives of India, *both Hindoos* and *Mussulmans*; and a person of respectability publicly found guilty of this vice would, if a *Hindoo*, lose his cast; if a *Mussulman*, be scouted by his friends. For the sake of a small gain made by the tax on the sale of spiritous liquor, how much vice and depravity does our Government encourage! The removal of the evil altogether we cannot expect; but even an immense increase of the rate of taxation would have a good effect.

The general description of people who indulge in this habit, are men of the lowest cast and small means. They find it difficult

cult enough to subsist themselves and their families by their personal exertions. FIELDING, in his paper on the Increase of Robbers, has several observations, which will be found particularly applicable to the situation of the lower classes among the people. He mentions their drinking and their love of pleasure, as chief causes of their crimes. He says, "However cheap the potion may "be, the lower classes will not easily be "able to supply themselves, for the intoxi"cating draught itself *disqualifies them* "*from using the honest means to acquire it.*"

There is no nation in the world whose amusements are more expensive than those of the Bengalees. It is true they have some pretext for them, most of them being founded on religious institutions. With these we cannot interfere. But it is rather inconsistent, that theft and robbery should supply the means of worship at the shrines of their gods; and there is very little reason

to

to doubt, that the *nautches*, *dholes*, *gauns*, and other religious amusements of many of the lower orders, are supplied from these sources. The author above mentioned has many excellent observations on this head.

Although we cannot interfere with their religion, we may in some degree prevent the irregularity of the natives at their work. They are generally inclined to work two or three days in the week, and sit idle during the rest of it. When they do work, they will do it night and day. By prohibiting every work at night, we shall render it necessary for them to work every day, and the frequency of fires in the villages will also decrease by this means; for they are generally occasioned by the carelessness of those who work during the night.

Whence do the lower ranks of natives obtain the means of indulging in drinking? and

 yet

yet we know to what a length it is carried. There can be little doubt, that *dacoity* and theft supply these. No good man would lose by the abolition of *soorees* and public-houses.

It is a subject of great doubt, whether the use of spiritous liquors is at all necessary to the existence of the lower orders in any nation; and it is a curious fact, that when the distilleries were altogether stopped in 1786 and 1787, in England, although bread and provisions were very high, yet the poor were more comfortable, and better fed and clothed than ever; they paid their rents regularly; quarrels and assaults were less frequent; they seldom resorted to pawn-brokers shops, and learned to live happily without spirits. There can be little doubt, that the natives in this country would suffer nothing by the abolition of the sale of spiritous liquors.

With

With regard to the press of Civil business, and too great attention to regular forms, I have already made several observations in the course of this Essay, particularly in the Chapter on Native Evidence, and on the delays in the administration of justice.

The last remaining cause needs only to be mentioned; for we must altogether change the condition of the natives, before they can afford to have houses better protected. Whenever a fire takes place, however, the Magistrate may soon improve the native huts, by compelling them to build in regular streets. By this means, the native villages become not only much neater and more easily kept clean, but stronger, and more easily guarded.

I shall now hasten to release my readers, by concluding my subject.

CHAP. IX.

CONCLUSION.

In the present Chapter, which is to conclude this Essay, it will be my object *shortly* to recapitulate the subjects which have been discussed *more at length* in the body of the work, including in this manner the most material changes which I have ventured to suggest, and referring the reader, for the reasons of these changes, to the foregoing chapters of the Essay. But, as I have very little reason to expect that all, or any of my fellow-labourers will have waded patiently through a large and troublesome de-

 tail,

tail, I intend the present Chapter for the use of those who, from want of time or inclination, may not peruse the whole. Had I been experienced in the art of book-making, I should have prepared as I went along, an enumeration in order of these subjects; but having neglected this, I can only apologise to the reader, and give him now the recapitulation of the existing evils and the remedies proposed, in the order in which they suggest themselves to my memory. I shall also add such new observations as occur to me, and conclude the whole with a few general directions for the conduct of the young Magistrate, at the most trying period of his career, viz. on his being first appointed to the charge of a troublesome district.

MAHARAJA SERFOGI'S SARASWATI MAHAL. THE TANJORE

CHANGES SUGGESTED.

Land Tenures, and Situation of Peasants.

Pottahs or leases are essential to the comfort of the *Ryots*. No officers of Government ought to be suffered, either directly or indirectly, to be proprietors of land. Armed with the authority of a situation under Government, there is no end to their tyranny,—no means of discovering their oppression. With a careless Magistrate, the officers of Court are thus the judges of their own causes. Will it be found in human nature, in any part of the world, that the Judge in his own cause will be unbiassed? Or is it because the Bengalee has a more

 than

than common share of principle, that we put this confidence in him?

The lands of *Paicks* and *Chokedars* should be restored to them. Double receipts ought to be given and granted on every payment of revenue, the *Zemindar* acknowledging receipt of the money, the peasant acknowledging to the *Zemindar* that he has obtained a receipt. The production of either of these will then be sufficient; and the number of causes that this simple process will cut off from the file of the Judge, the Register, and the native Commissioners, will be immense. A heavy fine ought to be levied when a neglect of this is proved. Farming in *ijara*, *kotkina*, *dur-kotkina*, *putnee*, *dur-putnee*, *&c.* ought to be entirely prohibited.

Appointment

Appointment and Pay of Officers and Servants.

Excepting, perhaps, the appointment of the head *Sheristadar* of the *Sudder Court*, the *Pundits* and *Moluvees* of the *Zillah* Courts, all inferior situations should be in the gift (without reference) of the heads of office; the *Sudder* and Appeal Courts, as well as each *Zillah* Judge, having the appointment and removal, and consequently the complete controul over their own officers. It is well known, that the days of corruption are now passed away. When they shall again be found, let Government suspect the whole service, and mingle the innocent with the guilty. *Darogas* ought particularly to look up to the Magistrate alone for their reward or punishment, in the continuation of, or dismission from their office. No officers discharged for a crime from

from one *Zillah*, ought ever to be employed by another Magistrate.

The Sudder Court of Dewany and Nizamut Adawlut.

Succession to appointments in this office ought to be confined to the office. It is most necessary, that the Judges in this Court should be long experienced in the methods of simplifying the numerous details. The duties of the members ought to be abridged, and the Court remain only a Court of Appeal in civil and criminal trials, not a Board of Police. The delay of this Court is particularly felt in heavy criminal cases, where immediate punishment is desirable. These, therefore, ought always to be taken up first, all other business yielding to them. This Court, whose members decide from papers only, ought to be much less scrupulous and tenacious than they are at present, and ought to give more confidence to the

decisions of *Zillah* and Circuit Judges, who must always possess better information. This observation I mean only to apply to criminal cases, when there is no chance of improper bias.

Mussulman Law,

In criminal cases to be gradually dispensed with, and the appointment of *Moluvees* on the Circuit annulled,—to have effect only in civil cases founded on religious prejudices,—in cases of inheritance or succession,—and in matters concerning cast.

Situation of Criminals.

Attention to our jails ought to occupy a very great share of the Magistrate's care. A small sum of money ought to be given, as by regulation, to every dismissed criminal. He should be sent to his *Zemindar*, with strict orders to give him employment.

ment. Houses of labour for released prisoners would be a blessing.

Situation of Witnesses.

Their testimony should be rendered less dangerous to themselves, and their access to our Courts more easy. Security and remuneration ought always to be afforded them. They ought to be *summoned*, not *dragged* into our Courts. The oath ought to be dispensed with where the witness is respectable.

Superintending Board of Police.

This institution is much wanted. Its numerous advantages are already detailed.—There is need also of a

Fund of Rewards, for Payment of Goindas and others.

The use of *Goindas* is strongly recommended,

mended, but under many restraints and limitations.

Sources of Information to a Magistrate.

These are, in the first place, his records, —the information of *Goindas,*—of old court officers,—of women,—of barbers and *Modees,*—seldom of his own officers.

One great source, not before mentioned, of information to a Magistrate, is found in the petitions and stories of interested persons; the causes of which are various: Sometimes there exists a quarrel concerning a debt unpaid, and which is of too small an amount to be worth suing for in the Civil Courts: Sometimes a quarrel concerning cast, or other family matters: Sometimes the parties have been guilty of abuse to each other,—a thing not easily forgotten by a native. In short, every one knows

knows how jealous natives are of each other, and how quarrelsome; but the chief of all the causes is a family feud about a *Zemindaree*. When any of these circumstances exist, even brothers will quarrel, and every act inflames them further; so that at last they scruple not to aim at each other's lives, and prefer complaints of *dacoity* and other serious crimes against each other. Where the parties are of any respectability or character, it is more than probable that they may hold, or may have held the situation of *Talookdar*, *Ijaradar*, *Gomastha*, or even *Paick* of the village, and in that capacity they must have had knowledge of *dacoities* of which they have given no information, or suspicious characters may have entered the village, or remained in it during the time they held these situations. Many circumstances of this nature, well arranged, and drawn out in aggravating language, in form of a petition, will, perhaps, induce us to throw the party complained against into jail;

jail; which event alone will give strength to the other party, and render his adversary's conviction easy. All complaints of this nature must be taken up by the *Daroga*, unless the quarrel or debt be settled, and a *douceur* given to him to prevent information. When it is so settled, the parties trust implicitly to the *Daroga's* good faith, for they have a hold upon him, from the circumstance of his having taken the money.

Another source of information is that of the person robbed. This but seldom occurs. When it does, if the persons informed against are not people favoured by the *Daroga*, he sends *Burkundauzes* to apprehend them; these are generally attended by *Goindas*, who point out the houses of the prisoners. When taken up, they are brought before the *Daroga;* but it generally happens, that one, two or more days intervene between their apprehension and appearance before

before the *Daroga*. The purpose of this is, to try if, by close confinement under the charge of the *Goindas* and *Burkundauzes*, by whom they are bound, beaten, and often scorched with torches, they can be induced to confess.

These and the other means made use of by the *Daroga*, viz. the promise of acquittal, &c., may, in some measure, account for the *Mofussil* confessions, to which, (on much reflection, I say), I would not attach the slightest credit, except in cases where the crime is of a very light nature. Can any one conceive, that a *Dacoit* will confess a crime, the punishment of which he knows to be severe, without having been tampered with, or cruelly forced to do so. I have myself seen marks of burning on the most sensible parts of the body, bearing the appearance of such recent infliction, that one could not hesitate to think the prisoner had received them to induce him to confess.

I men-

I mentioned before, that the quarrels of *Zemindars* formed one of the chief objects of attention. One sees every day, that *Zemindars* who are at variance, send bodies of men to commit outrages upon and among each other. These parties seldom go further than beating each other, and entering each other's houses. For this they are but slightly punished, if punished at all. The general practice is to send out a *purwannah* (or order) to the *Daroga* to put a stop to the quarrel. But as this is not sufficient revenge for the parties, they say in their petition, "that the rioters not only entered "their houses, but robbed them of proper- "ty to a considerable amount." The affair then assumes a very different appearance. Instead of being a riot committed by a number of idle persons, it becomes (or rather, I ought to say, wears the appearance of) a *dacoity*.

 In

In these complaints one cannot be too cautious, for the prosecutor can easily prove that the prisoners attacked his house; but it will remain to be proved with what intention they did so. The prosecutor may also prove, that, previous to the date of the attack, he had such things in his house as are stated in the complaint, and that after that date they were gone. What is more easy than to dispose of his goods? If you have not entered into particulars,—if you have not gone to the fountain head,—if you have not found out the quarrel, you will suppose the prisoners guilty; you will send into the village to learn their characters, and finding them to be *idle fellows*, this will add to their offences, when, perhaps, it is their only one. Thus many an innocent (or at least not very guilty) man, suffers a severe punishment; for, even if the crime is not clearly proved, yet there is great suspicion attached to them, and they are sentenced

tenced to find security for their good behaviour, or to remain in confinement. Who will become their security? They have been proved to be idle, quarrelsome, and above all, they have been in jail. Should you take up all the idle and quarrelsome, you might take up half of each village. In most cases you may find the original cause of complaint, and when you have found it, you will do well to take up the investigation of the cause, and leave that of the complaint. This being done, you will see how far the circumstances developed in the course of the trial bear upon this foundation.

Confessions.

When a person has confessed in the *mofussil*, and comes prepared to confess in Court that he has committed a crime, we ought to be particularly careful and tender in

in receiving it. We ought not to begin by asking him whether he actually committed the crime, but first tell him the extent and punishment of the crime of which he is accused; inform him, that if he has been cruelly treated, or has had the promise of any advantage, he may now retract his confessions.

No one who has not been an eye-witness to the cruelties of the *Darogas*, *Burkundauzes*, and *Goindas*, could bring himself to believe the extent to which they are carried. For the small reward and small degree of applause they obtain for apprehending criminals, they will scorch them with torches, beat and bind them, keep them fasting whole days. Nay, I have seen trials, in which it appeared, that the prisoners had been bound with ropes so tight, that the wound remained visible for months.

At

At the same time, they tell them, their only chance of release is from confessing,— that either the punishment will be small, or they will try to get them off. If you find that the prisoner had been taken up immediately after the robbery, on strong grounds, or had been taken in the act, and had not been confined previous to his confession, if the *Daroga* sends respectable witnesses to the confession, you may then attach considerable credit to the assertion of a confession having taken place. The prisoner's denying in Court may easily be accounted for, by his having been instructed by his jail companions during his confinement. I would still, under all the above-mentioned circumstances, be little inclined to believe the confession of any crime, the punishment of which is long imprisonment, or the *corah;* for who but an idiot would confess and make his punishment a certainty, when more than half the guilty get off for want of evidence. One finds considerable difficulty in

the punishment of false complaint in *Goindas* and others. The custom is, to make them over to the Court of Circuit; but a long period thus intervenes, and the matter cools. It is difficult then to prove it, and the offender generally escapes. The instantaneous punishment of the party complaining falsely, is attended with an excellent effect. I would almost be rash enough to propose, that you should punish the offender immediately, and in presence of the injured parties, who will carry the account of it into the *Mofussil.*

Tenacity of Opinion.

Accustomed to implicit submission from all around us, how often are we firmly wedded to an opinion, which we may have formed on false grounds. We do not wish that the natives should see our fallibility; and we will rather try to find arguments in support of our side of the question, than listen

listen to the truth. A hasty prejudice, formed against the natives of this country, is very difficult to be removed. Although there can be no doubt, that the natives, particularly the poor among them, from their appearance, their habits and their principles, are objects which might seem to deserve our detestation, yet ought we to make every allowance for them. Those who ought to instruct them are the very men who keep them in ignorance; for the lower orders are ignorant of every thing like religious or moral principle. Let us pity them, and in all cases extend our mercy to the poor and ignorant, rather than to the rich. Let not their squalid appearance, and their want of principle, shut our ears against their complaints. "The sufferings of the poor," (says FIELDING), "are less known than "their misdeeds, and therefore we are the "less apt to pity them. They starve, they "freeze, they rot among themselves; but "they rob, they steal, they beg among their

 "betters.

"betters. We hear daily of their mis-"deeds, and are annoyed by their im-"portunities, but how few of us go to "see them in the distressing situations "which are often the causes of these "misdeeds."

Razeenamas or Amicable Adjustments.

There is great danger in carelessly receiving *Razeenamas;* and they ought only to be accepted on full and deliberate investigation. For the purpose of elucidating this, I shall state a case which very often occurs in Bengal.

A prosecutor enters a complaint for *mar-peet*, and *loat-tarage*, (these are the words of a common complaint for a beating), in which they seldom forget to state, that some of their property was taken away. The complaint may be against two or three persons; and to support it, he gives the name of

of five or six witnesses. If the parties accused come to Court, they are sure either of being kept in jail, at least in restraint, for a while, before the trial comes on. The witnesses are afraid of the oath, and are also sure of being put to great expense. Rather than undergo this, they will pray the prosecutor, and he will enter a *razeenama* (or compromise). Were we to accept all these, what a field would be laid open for extortion! Besides this consideration, we ought to reflect, that where the injury is at all serious, although the person offended may dispense with satisfaction, yet the public good will suffer by a compromise. "A "small crime," says BECCARIA, "is some-"times pardoned, if the person injured "chooses to forgive the offender. This "may be a mark of humanity and good na-"ture, but it is contrary to the good of the "public. A private citizen may dispense "with satisfaction for the injury he has re-"ceived; he, however, cannot remove the

"necessity

" necessity of example. The right of pu-
" nishing belongs not to an individual, but
" to society in general, and to the Sove-
" reign. The citizen may renounce his own
" portion of this right, but cannot that of
" others."

I would, however, strongly recommend *razeenamas*, when the party accusing may have fallen into an error, and wishes to retract his accusation, or where the subject of the case is only a petty quarrel, and no actual crime or infamy attaches to the accused. To encourage this spirit of reconciliation is right; for we may be assured, that the same spirit which induces them to adjust their disputes, will prevent their commencing others. It is a question of some moment, whether we ought to take the *razeenamas* of poor *Ryots*, who have instituted such against their *Zemindars*. If we do take them, we relieve the *Ryots* from the expense and misery attending the prosecu-

tion

tion of a man in power ; but, at the same time, by every fresh instance, we increase the tyranny of the *Zemindars* in the *Mofussil.* The *Zemindar* will naturally say, that he soon convinced the poor wretch, that nothing could come from prosecuting the suit ; and he will be believed : Whereas, in many cases, by carrying on the investigation, you may benefit thousands by redressing the grievances of a few.

Could the poor *Ryot* once be convinced that he had any chance of success against his *Zemindar*, his fears would diminish, and he would become less abject and dependent. You must here, however, be careful to take the middle path, neither encouraging the *Ryots* too much (for then their complaints would be endless), nor suffering them to remain completely at the mercy of the *Zemindars* ; for you will, in that case, have a race of thieves in a very short time.

Prosecutors.

Prosecutors.

It is most desirable, that a Public Prosecutor, on the part of the Company, should be appointed to conduct all trials where danger may be incurred by the private individual. This is particularly necessary in districts where *dacoity* is prevalent, and the natives have just cause to dread the revenge of the *Dacoits*, by standing forth as prosecutors.

The intention of a prosecutor in instituting a complaint, is not always redress for the injury he has suffered. It is often made merely with a design of increasing his power in the district. A man of property threatens those under him, by reminding them, that if they do not obey him, he will send in a complaint against them: In other words, he will ruin them; for it is

too

too true, that, from the dilatory nature of our Courts, and the press of business, these terms have become synonymous. As this threat is often made, it would lose its effect, were it not sometimes put in execution. In this way we may account for many prosecutions, as it is essentially necessary that the *Zemindars* should preserve despotic power in their districts. In a trial, therefore, one of the principal objects will often be to find out what interest the prosecutor has in proving his complaint.

In many cases, you will find, that the person said to be injured does come forward, while another, who has nothing to do with the matter, stands forth as prosecutor, the injured person remaining concealed, and carrying on the trial, behind the curtain, by means of the prosecutor. In these cases, the prisoners are generally unruly *Ryots*, who have refused to conform to the will of their tyrant *Zemindar*. The natives govern by

by fear more than by kindness; and, surely, nothing will tend to make a man more dreaded, than the idea that he possesses influence enough to confine a number of his fellow creatures. Will it be any satisfaction to these poor men, to find, that after several months they have been proved guiltless, and their prosecutor punished with a fine of a few rupees? This example of his power is of more value than a very great fine to the prosecutor. I remember an instance wherein the truth of this was most evident. A complaint was entered by three persons against a man of respectability; and it was proved by the witnesses, that the three persons intending to complain were heard repeatedly to say, "We must have him put "in jail; and even if the complaint is not "proved, he will have six months confine-"ment before the trial comes on." The press of business which then existed in *Zillah* Kishnagur warranted this speech.

For

For *Zemindars* and others who complain falsely, a pecuniary fine is in the highest degree unjust; for the person who has suffered confinement has suffered a personal wrong; and "the wrongs relating to the "persons of others," (as is most justly remarked by BECCARIA,) "ought to be cor-"porally punished. The great and the "rich should by no means have it in their "power to set a price on the weak and the "indigent."

The effects of such punishments of the rich and powerful on the minds of the vulgar in India, are grand and striking. By this they learn, that riches and power are no security against punishment under our Government; yet how few are the instances of a rich and powerful native suffering a disgraceful punishment. It is not so in England, although there the instances ought to be comparatively few; for the men in power in India, nay, even the men of family, have

have not that fine sense of honour which Noblemen or men of family in England possess. They do not feel so terribly the indelible disgrace of a corporal punishment. Shall we then put them above the condition of Noblemen among ourselves, who are equally subject to the laws with men of the lowest rank. Besides this consideration, we should recollect that punishment ought to be estimated, not according to the sensiblity of the offender, but to the injury done to society.

Decisions of a Magistrate.

It is not sufficient that you should decide from a thorough conviction of the guilt or innocence of the parties: you must also bring all the papers in the trial to that degree of perfection that another person, afterwards taking up these papers, may perceive the justice of your decision. It often occurs, that you are perfectly convinced in

your

your own mind of the guilt of a person, and decide in consequence, forgetting that, after a lapse of time, when all interest in the case has ceased, your papers may be called for, and the proof of this guilt not appearing on the proceedings, the fact of his having been punished will not be allowed to weigh against him. The justice of your decisions also will be called in question.

Complaints against Budmash, or Suspicious Persons.

These ought never to be received, except where there appear very just grounds: The charge is of too great latitude, and admits of much abuse.

List of Accusations.

It would be of essential use to the Magistrate, were he to keep a list of all the ac-

cusations which, in the course of the different trials, he meets with against the *Darogas* in his *Zillah*. After collecting those together, should he at any time suspect a *Daroga* of harbouring a *Dacoit*, or of any other criminal act, nothing will so completely secure his future services as showing him this list, and telling him the conditions on which he may expect forgiveness. Well does he know, that if once in disgrace, his friends will leave him, and his enemies come forward against him.

Hajut Tujwees.

When on a complaint a prisoner is accused of having once been confined for six or eight months, it will be necessary to inquire, whether this was in the *hajut tujwees*, or department of the jail for unexamined prisoners, or as a *meadee* or condemned person; for the press of business is often the cause of a prisoner's being confined for that time before

before his trial. A good deal has already been said on the subject of false complaints; but the fact of the inadequacy of the punishment cannot be too much insisted on. The undermentioned is a case which, I fear, too frequently happens. It occurred in *Zillah* Nuddea. A *Brahmin* of some influence in the *mofussil* as a *Zemindar*, entered a complaint against another *Zemindar* of much greater respectability, accusing him of harbouring *Dacoits*, secreting stolen property, and causing *dacoity*. The complaint also included fifteen or twenty *Ryots* of this *Zemindar*, who were accused of being notoriously bad characters as *Dacoits*, cow-stealers, thieves, &c. The complaint bore a most formidable appearance; the accused were immediately summoned, and being put in jail, were kept for four months,* during the hot weather, with the most

* No activity of the Magistrate was here wanting: the press of business was so great it could not be otherwise.

most abandoned wretches, and exposed to the cruelty and extortion of the jailor, seapoys, &c.; during which time, their families, who lived by their daily labour, were left to undergo all the evils of poverty without the possibility of redress. When after four months the cause was tried, it was proved, that a brother of the prosecutor's had formerly been apprehended by the defendant, on suspicion of theft, and had not yet been tried. The witnesses in this last-mentioned trial were found to be the present prisoners; and the prosecutor had instituted this complaint in order that his brother's trial might be delayed, and that the testimony of these witnesses might be invalidated, from the circumstances of their being themselves confined as criminals. This was one motive; but, besides this, he was sure, from the press of business, that they would be confined some months. What redress had these men? Why, after four months

months confinement, during which their families were starved, the prosecutor (a rich man) was ordered to pay a small fine to Government. In my opinion, as the murderer of the peace and happiness of these men and their families, any thing short of death would have been mercy to such a wretch.

General Character of Prisoners.

Much evil arises from the custom of trying men for a particular crime, and suiting the punishment to that offence, without taking into consideration the general character of the prisoner. Suppose a gang brought in for burglary or *dacoity*; that there are amongst them two or three leading men, long inured to crimes, and that these have seduced a few young thoughtless fellows, whose necessities were great, to join them; if the case is tried, and the accusation proved, would it be just that the same punish-

ment should be inflicted on all the gang? Yet this is a very common error; and by it many useful men, whom a small punishment would reclaim, are lost to society.

Officers of a Thannah.

It would be of considerable advantage, that the officers at a *thannah* should be of distinct interests and views. Thus, when a *Daroga* is appointed, let his *Jemmadar* have a promise of succeeding him, on proving his bad conduct. Let the *Burkundauzes* be alert in watching the conduct of the *Jemmadar*, the *Moluvees* and *Bukshees*. This will break the connection that subsists between the *Daroga* and his under officers. This step may, indeed, have one bad effect, in giving rise to false complaints; but the investigation of these will always be beneficial, for it will lay open scenes of villany with which we are totally unacquainted, the parties, in their anxiety to crimi-

nate each other, and to acquit themselves, unfolding every thing.

Press of Civil and Criminal Business.

The situation of Judge and Magistrate ought certainly to form separate appointments. In districts in which the natives are litigious, the appeals from the Register, *Moluvees*, *Pundits* and *Moonsifs* alone, would take up the greater part of the week; yet these form but a small portion of the duties of a Judge and Magistrate. He has, besides this, his own file of heavy causes, which he alone is competent to decide. In these, his civil duties, he must at least spend three days of the week. He must devote a whole day to miscellaneous petitions, or he must allow them to interfere with his proceedings on the other days. The first is certainly the preferable plan. This leaves him only three days for the management of the Criminal

minal Department, in which he has to attend to the general state of the Police. He has the hearing of all reports,—the trials of criminals,—the preparation for the Courts of Circuit,—the getting ready the monthly statements, lists, &c.,—the writing of letters and reports to the Courts of Appeal, and *Sudder Dewany Adawlut*,—the correspondence with the neighbouring Magistrates, and many other duties. By this intermixture of Civil and Criminal business, his attention is constantly divided. When, on reflection, it must be allowed, that where he has to contend with the determined and unceasing knavery of the officers of police, and of his Court, and of the landholders, who all have their own interest in view, his individual attention, and that continually on the stretch, would barely suffice. Government have, indeed, in some districts, remedied this evil, by the appointment of Assistant Judges and Magistrates. Were these appointments more generally adopted, and

dacoity

dacoity were still found to prevail, Government might then, with justice, ascribe it to the negligence of their servants.

Occasional Tours of the Magistrates and their Assistants.

The introduction of this plan throughout the country, will be attended with the greatest benefit. In these circuits, the Courts held in the villages should try all small suits,—all disputes between landlord and tenant,—and all small offences. The Magistrate, or his Assistant, might collect information regarding the situation of the peasants: He might take *silsillabundy* security (or frank pledge,) where it might be advisable. His trials would be rapid, from his having the contested property in civil cases before his eyes, and the whole village to give their evidence on the matter at issue, or to testify to character in criminal

cases.

cases. He would be a check on criminals, whom he might always discover, by their flying from the village on his approach; at the same time, he would be a comfort and support to the poor and oppressed. He would see behind the veil, which distance and interest throw before the eyes of the Magistrate who remains always at his head station. He would discover more of the actual state of the district in going once round in this manner, than many years sitting in Court would shew him. Nay, I would almost venture to assert, that the Judge may sit for years at the *Sudder* station, and may not know what oppression is carried on in the *Mofussil*.

It is the object of all the weighty authorities in the district that he should remain in ignorance of what goes on; and they or their agents are ever about the Court. There the poor have seldom means of access:

cess; and when they are unfortunate enough to arrive in Court, the wealth of their antagonists can put off the trial of the cause, till it is too late, and the unhappy complainants are glad to give in a *Razinama.*

In favour of the Judge, or one or more of his Assistants going into the *Mofussil,* it may be added, that the two great ends, (as noticed by BECCARIA,) of speedy investigation and speedy punishment, will be attained. At present, the first report of a crime is sent in by the *Daroga* at his leisure, seldom sooner than two or three days after its occurrence, and often much longer; an order is then passed for his sending in further proceedings and witnesses. This he also does at his leisure, as it is his interest that you should not have so clear a view of the case as he has. Delay also affords him time to feel the purses of the parties, and to arrange matters; and you may be certain, that every case is previously tried by the

Daroga

Daroga in the *Mofussil.* But, lest they should put you out of humour, and thus defeat their own ends, they will send you one or two witnesses occasionally. Every time you take up the trial, you will probably need to read the proceedings over again; for you cannot be supposed, amidst the multiplicity of petty cases, either to charge your memory with them, or to keep an abstract of each (a thing which you ought to do in all weightier cases); thus you become tired of the work, and glad that it should end in any way.

There are some observations in the Fourth Chapter of the "Treatise on Crimes and "Punishments," peculiarly applicable to this subject, viz. the different lights in which different Judges, or even the same Judges at different times, view a case. "Every man has his own point of view, "and at different times sees the same ob-"jects in different lights: we see the fate of

"a delin-

" a delinquent changed many times in pass-
" ing through the different Courts." Dr. JOHNSON has an observation much to the same purpose, when he says, " Two men
" examining the same question, proceed
" generally like a physician and gardener
" in selecting herbs, or a general and
" a farmer viewing a field: They bring
" minds impressed with very different no-
" tions, and direct their enquiries to diffe-
" rent ends; thus they form contrary con-
" clusions, and each wonders at the other's
" absurdity."

If this is the case, how can we expect, that in this country, when we have the papers in a trial sent in in detached pieces, and at different times, where two or three persons are successively employed in the conduct of a trial, and where the proceedings must pass from one Court to another in many cases,—how can we expect, that in-

stances

stances of the criminal's escaping should not often occur?

A curious anecdote, and which will confirm the truth of the observation, is related by Sir SAMUEL ROMILLY, in his pamphlet on The Criminal Law of England. "Not "many years ago, on the Norfolk Circuit, "a larceny was committed by two men in "a poultry yard, but only one of them was "apprehended; the other having escaped to "a different part of the country, eluded all "pursuit. At the next assizes the appre-"hended thief was tried and convicted; "but Lord LOUGHBOROUGH thinking the "offence a very slight one, sentenced him "only to a few months imprisonment. The "news of this sentence having reached the "accomplice in his retreat, he immediately "returned and surrendered himself to take "his trial at the next assizes. The next "assizes came, but unfortunately for the

"prisoner,

"prisoner, it was a different Judge who "presided; and, still more unfortunately, "Mr. Justice Gould, who happened to be "Judge, though of a very mild disposi-"tion, had observed, or thought he had "observed, that persons who set out "with stealing fowls, generally end by com-"mitting the most atrocious crimes; and "building a sort of system on this observa-"tion, had made it a rule to punish the of-"fence with the greatest severity; and he, "accordingly, to the great astonishment of "the unhappy man, sentenced him to be "transported. While taking his depar-"ture for Botany Bay, the short term of "his accomplice's imprisonment had ex-"pired!!!"

Speedy Trial and Punishment.

Speedy investigation and speedy punishment are the essence of justice. "An im-"mediate punishment is more useful, be-

"cause

"cause the smaller the interval of time be-
"tween the crime and the punishment, the
"stronger and more lasting will be the as-
"sociation between crime and punishment;
"so that they will be considered, the one
"as cause, the other as the unavoidable
"and necessary effect."—"The crime re-
"maining as yet fresh in our memory,
"heightens the feelings we experience in
"seeing a public punishment, which, if
"long delayed, appears rather a horrible
"sight, than the necessary consequence
"of a crime."

The above arguments are particularly applicable to smaller cases, which may be so easily tried and decided on the spot, but which, if allowed to accumulate in the *Sherishta* of a *Zillah*, by their number, tie the hands of a Magistrate, while, at the same time, there will be but a faint chance of their being decided justly, from the interference

rence of the *Daroga*, *Vakeels*, and other interested persons.

First Orders.

We ought to be very cautious in the first orders we pass, whether on a trial, a petition, or other miscellaneous representation. Upon a single order of ours, what a superstructure will a clever native raise! We must look forward to the distant consequences of what we do. Our minds are generally more affected by an immediate evil before our eyes, than by the remote and fatal consequences of a false principle being once adopted; and we are accustomed to look only to the immediate effects of what we do. In giving a *perwanah*, a letter, a *burkundaze*, or, indeed, in conferring any favour on a native, we do not suppose that he will use it and our names for the worst of purposes in the *Mofussil;* that he will

 pervert

pervert the meaning of our order, and make it the means of tyranny and oppression. The exultation on receiving a *perwanah* from the Court, or a *burkundaze* from the *Daroga*, are only known to those who have been in the *Mofussil.* The parties generally assemble an armed force, under pretence of enforcing the order, and sally out, holding the *perwanah* as their ensign. Whatever acts of violence are committed under this banner, the poor *Ryots* conceive to be countenanced by the Court. Although caution is always necessary, it is particularly so in countenancing or supporting the natives in any way.

If they had not great ends in view, why would they keep the *Vakeels* in pay, and be at continual expence for stamp paper, &c., in giving in multitudes of miscellaneous petitions, which we daily have presented to us in Court. An order of any sort passed on these

these petitions is a favour conferred on the party; and an incautious order, given in a hasty moment, which bestows on him "one inch" of power, insures his taking "an ell."

It may be observed also, that the natives of this country choose the *mollia tempora* for giving in these petitions; and in this art they are particularly skilful. LAVATER studied not more the various turns of the human face and mind, when subject to different emotions, than they do. When you are fatigued with business, how often do you see that a petition is presented, which the petitioner states to be a clear and fair statement of facts. In this he is supported by your right-hand man, or by any one of your *Aumilah*, who may find it his interest to support him; and you, glad to get home, pass an order upon it.

I would devote not only a particular day, but a particular part of the day, for receiving miscellaneous petitions. Let it, if possible, be on the earliest part of the day, when you are freshest; and let your *Moonshee* look over all the petitions; and when there are two sides of a question, let both petitions be placed and read together. If this is not done, you may pass an order on one petition which you must reverse on the next. In short, consider miscellaneous petitions as forming the foundation of most complaints that are tried; and, be assured, that, by a prompt and steady conduct in the management of them, you will take an immense load of business off your hands.

Quarrels have their beginning in the most trivial circumstances; but by increasing the power of the parties, you increase their injuries to each other, and, at last the case becomes serious, and is brought into Court, complicated

complicated in the extreme; and all this trouble you have brought upon yourself. I would not hesitate to say, that the miscellaneous duty of a Magistrate is far more difficult than the mere decision of causes; and the police of the districts will be better, in proportion to the steps that are taken to prevent crimes, not to the frequency of punishments.

Corporal Punishment.

If a Magistrate wishes to increase the number of criminals in his district, he will be bountiful in the use of the rattan. How many young offenders might be reclaimed, and become useful subjects, were it not for this foolish, though perhaps well intended display of authority. For a slight offence, confinement, without irons, in a jail, on a small allowance, will be quite enough to deter a beginner in vice; for a greater crime,

crime, or a repetition of a lesser, heavy irons may be added, hard work on the roads prescribed, and the deprivation of comforts. I only mean this, however, for the lesser crimes, and where the period of confinement is short. In long *meads* (or periods of confinement), by these means we should lose in the lives of the prisoners, both their services to society and their example to deter others. By inflicting the punishment of the rattan, the prisoner is marked for life; for, if well inflicted (if this is not an abuse of terms), the marks never leave him; he is scouted wherever he goes; he is in every one's power; for it seems to me to be generally allowed, that a man caught with a mark upon his back, may, in the event of any theft or other accident, be sent in on suspicion. How absurd this is: Thus, the punishment of a small crime, of which a man may have repented, attends him through life. He must, of necessity, associate with the

the abandoned, for he himself is abandoned; and he will proceed from one act of guilt to another, till at last we are forced to deprive of his liberty for life, or to condemn to an ignominious death, the man whom a few minutes thought would have saved. FIELDING, than whom there never existed a person more fit to treat the subject of Police, from his intimate knowledge of human nature, has this observation: "Fasting is the proper punishment of profligacy; not any punishment that is attended with shame. Punishment that deprives a man of all sense of honour, can never contribute to make him virtuous."

Released Prisoners.

I would recommend, that every man who is released from punishment of a lesser crime, or indeed any crime, be sent into the *Mofussil*, with strict orders to the *Ze-*

 mindar

mindar to receive him, and to the *Daroga* never to send him again, unless he had sufficient proof of his guilt. By these means we shall give every criminal an opportunity of reforming, and we can do no mischief; even if he turned ill afterwards, by directing the eyes of the *Zemindar* to his conduct, and thus obtaining sufficient evidence of his guilt.

Frank Pledge.

Much has been said against the system of taking security, termed *silsillabunda zamin.* This, although a common and almost a universal system among the *Zemindars*, may not be known to every one. The head *Zemindar* makes the *Ijaradars*, *Kotkinadars*, and other descriptions of farmers, enter into security to give up all bad characters, and to be answerable for the appearance of their *Ryots*. The *Ijaradars* take the same agreement

agreement from the *Gomasthas*, *Paicks*, *Mundils*, &c. and these last from the *Ryots* themselves; each man becoming security for his neighbour, and he for him in return. It is alleged, that these give frequent opportunities for oppression; but of such opportunities there are so many, that the abolition of this one, which is attended with so much good, would not be felt. It ought to be publicly encouraged, and the *Zemindars* requested once a year, or once in so many years, to give in a list of the *Ryots*, and the securities of each. By this means we should know to whom we ought to apply for suspicious characters. When a prisoner is acquitted, he might be made over to his neighbours, and these being ordered to attend to his conduct, would keep him somewhat in awe.

There is a most curious institution, of which I have somewhere read, which was formed by the reigning authority in Egypt,

and

and by which it was required, that every Egyptian should, on a certain day, declare before the Governor of the Province, by what means he maintained himself. If not able to do this, he was condemned to death. The punishment here was indeed ill proportioned to the crime; but the institution was dictated by wisdom.

Darogas, &c.

In the selection of fit men to fill the vacant situations of *Darogas*, *Jemmudars*, &c. considerable attention is necessary, as they are all corrupt; and this corruption increases in the proportion of their abilities. I would recommend for such offices, those men who have yet to rise in your service. Active *Peons*, *Burkundazes* and *Hurcarrahs*, appear to me to make the best *Darogas*. It will no doubt be said, that they ought to be men of respectability, and some learning; but be assured, that their situation will render

der them sufficiently respectable, and give them more than enough of power; and by keeping an intelligent writer, they will be able to transact all business sufficiently well. The reasons for preferring men of this description are.—that they are better acquainted with the lower orders; they are not above their work; and having their fortunes to make, they will be more anxious to distinguish themselves. To such men the monthly salary is of consequence. They have not any degree of pomp or splendour to keep up, or numerous dependants to provide for; and you can, when necessary, be more severe on them.

I do not think it advisable that the *Darogas* should be respectable in the eyes of the natives. When they are so, their power and tyranny are unbounded. They ought to be mere instruments in our hands, which we can throw away at pleasure; and it would be well if we had the power of dismissing them;

them; for, as it now is, the *Daroga* fears a Magistrate as little as he fears the consequences of taking a bribe. They well know that they must be made over to the Court of Circuit, and that either circumstances will occur which will tend to cool the business, and the Circuit Judge will, at a distance of time, view the crime in a less serious light, or that they will be able to make use of their time to bribe on all sides, and overturn the proceedings in the trial.

How very seldom do we see that a *Daroga* is convicted, and yet, who does not know that they are the greatest of criminals? It is a bad plan that their salaries should be increased, with the intention of making them honest. No salary that the Company could afford to give, would bear any proportion to the immense sums that these men make by corruption. It is true, that, had they a larger salary, they could not

plead

plead in excuse for their corruption, that they had not wherewithal to live on. But this argument only holds with honest men; and I would venture to say, that no honest man, knowing what the situation of a *Daroga* is, would accept of it.

There is an advantage attending the having illiterate men as *Darogas*,—that they cannot so easily deceive you in their reports; they must call in the assistance of their *Mohurrir*; and when two men are in a secret, the detection is more easy and probable.

No pains you can take will ever prevent corruption among your *Darogas*; but every little precaution will render it more difficult, and therefore, you ought to spare no pains in effecting this. Keep them constantly employed in the performance of the different parts of our complete routine of duty, and there will be little time left to attend

attend to their own concerns. Give them innumerable *muksahs* (forms) to make out every month, and force them to become regular. This regularity is the very soul of police. It shews them that you will spare no pains; and your activity will prevent many crimes. Do not permit them to apprehend any one for slight offences, unless on the surest grounds; and let them send in those whom they apprehend immediately. If you suffer their keeping them in the *thannah* for further proof, or their releasing them on security, you give them too much power. By many it is maintained, that if you do not give the *Darogas* countenance, and permit them making money in one way, they will do it in another; and that, therefore, the small cases of beating, quarrels, &c. ought to be left to them. This is surely wrong, for they will make money in every case; and the more opportunities you take from them of so doing the better. True it is, that if you do not allow the small cases

of

of beating, &c. to be settled by them, you will give yourself much additional trouble; but you must institute a summary mode of deciding them; and this is not difficult, if you apply your attention to it.

Regulations.

It will be found, that many of the plans recommended in these Remarks are inconsistent with the Regulations; and from this, perhaps, it may be inferred, that the author does not pay due respect to these. This is not the case: He, on the contrary, strongly recommends that strict attention should be paid to them wherever it is possible, consistently with the obtaining of the end in view; but there are many occasions where this cannot be done, and we are obliged either to act contrary to them, or to lose the opportunity of doing good. Let us beware, however, lest this become a common

mon practice, for there is none more dangerous. The same regulations that have been used many years, will, in most cases, be attended with similar effects; and that plan is always the best whose effects we know from experience. Independently of this, few codes, taken in general, shew greater knowledge or foresight than these Regulations. It is only a pity that they are so voluminous, as to preclude the possibility of our studying them in mass. Mr. COLEBROOKE's excellent Digest of them has, indeed, rendered this important branch of study more easy in the acquisition.

HINTS

HINTS TO A YOUNG MAGISTRATE, ON HIS TAKING POSSESSION OF A TROUBLESOME DISTRICT.

On taking charge of a district where *dacoity* and theft are prevalent, send to each *thannah* as *Burkundazes*, a few of the *Omedwars*,* of whom you ought always to have a number about you. Let these have orders to keep a good look out on the conduct of the *Darogas*, and to learn the actual amount of *dacoities* committed, and which it has been the custom of the *Darogas* to conceal.

On

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* *Omedwars* are persons expecting employment, of whom there are always a number about a Court.

On receiving good information, make over two or three *Darogas* to the Court of Circuit, and from that day you may expect information from the remainder.

Be as active, determined and acute at first as possible, shewing your own *Aumilah*, and the *Vakeels* about the Court, that you can proceed with severity, if forced to it; but be cautious of employing the *Zemindars* for awhile. If you do shew them favour your jails will soon be full of their refractory *Ryots*. At first employ only low wretches, criminals and others, to ascertain the real *Sirdars*; but never listen to their tales, unless confirmed from other sources of information; for instance, from the *Zemindary Naibs*,—from the *sherista* (the records),—from the reports of the *Darogas*, *&c.* You may then venture to send a few of these men as *Goindas*, but keep a strict look out on their conduct, otherwise their depreda-

tions

tions will rival those of the *Darogas.* Let them be attended with guards in disguise, and let these guards carry orders to the *Darogas*, to assist them when necessary; but make them aware of the punishment that will attend the making use of their *perwanahs* or situation to collect money, or to oppress the *Ryots.*

The advantage of giving some encouragement to *Goindas* at first is, that you will by these means have all the *Goindas*, both professional and others, collected around you with their different stories; you can then select the true from the false.

When from these spies, and other sources of intelligence, you have collected information of the real *Sirdars*, then plainly and directly inform the *Darogas* and *Zemindars* that they must give up these men. Employ several parties having distinct interests in

 appre-

apprehending them. Each will try to outstrip the other, and gain favour at Court; and, be sure that you make their services in this way the only price of your favour.

There are many different ways in which you may serve the *Zemindars*, by attending to their complaints, and speedily redressing their grievances; and these may be made their rewards, without departing from your duty. At first use only kindness with them; for you may depend on it, that against a combination of *Zemindars* and corrupt *Darogas* you can do nothing; but if, after this they still continue their old practices, then be severe in the extreme. Keep on good terms with the *Sudder Naibs*,* but

* The *Sudder Naibs* are agents who attend at the head station on the part of the *Zemindars*. They are the most intelligent description of people, but require much management.

but do not allow them or any other party to have a leading hand in Court.

See that for a while no *Thannah Vakeels* attend the Court during trials; and do not suffer the *Burkundazes* to come straight from any one *Thannah* to the Court. Let each *Daroga* send his reports to the first *Thannah* on the road to the *Sudder* station; from thence let them be sent to the next by a fresh hand, and so on. By these means a great number of persons will be employed in bringing in the reports; and the plans of the *Darogas* will be defeated; for you may depend on it, that all *Burkundazes* that come to Court are spies.

When you have got the chief *Sirdars* in jail, the next difficulty is to get witnesses to convict them; and here I would recommend the plan adopted in *Zillah* Nuddea by Mr. Eliot, viz. never to suffer a *Peon* to go into the *Mofussil*, for the purpose of

 summoning

summoning and accompanying the witnesses, but merely make them execute a *mohulka* (or agreement), that they will appear on a certain day. When they do come, treat them kindly, and do not for some time make over to the Court of Circuit for breach of oath. Take their depositions quickly, and be not too severe in your interrogations. By these means you will soon find that witnesses will not refuse to attend. Without these precautions, all your endeavours to obtain evidence will be vain.

Be very cautious how *soornthauls* (inquests) are taken: These are the curses of the country; and be sure that you insist on the *Darogas* sending in respectable witnesses to them; for you may depend on it, that all the respectable men of the village pay if they do not come in.

At first, keep your *Aumilah* in fear and trembling; but beware of turning any of them

them away till you see whether you can make any thing out of them.

Continually oppose your *Aumilah*, when they wish to present certain cases before others; for this will lessen their consequence in the eyes of the natives, who pay them to get on their causes.

Favour no one more than another; for, be assured, if you do, he will make a bad use of it: and let none of them speak except when asked; for, if you do, they are so cunning they will certainly deceive you.

Hear the stories of every one, but never act from first impressions. Wait coolly till some confirming circumstance occur.

When any plan for the improvement of the police shall occur to the Magistrate, or be suggested by another, he ought to make

a memorandum of it in a book kept for the purpose, otherwise the multiplicity of business will drive it out of his memory. An extract from a memorandum-book of this kind will be found in the Appendix.

Let the reader now turn from these evils which have been in every shape exhibited to his view, and compare the present with the former state of India.

It was the character of the former Governments of India, to punish, in the most summary manner, and with the greatest cruelty, all crimes which were openly committed; but not by constant investigation, and by soliciting information, to search for crimes. Few crimes were therefore punished, and from this an idea prevailed that few were committed. It is the character of our Government to hunt out criminals wherever they may be found,—to dive into the most hidden recesses of vice, and to punish every

every description of offence with proportionate severity, but with mildness compared with the former practice.

Less now remains hidden from us, and the mass of criminal delinquency seems out of all proportion great. Hence the false idea, that our *system* of judicial administration is so defective. This deception I have often witnessed on a smaller scale, in the appearance of peace and tranquillity which a *Zillah* in Bengal often presents, when under an apathetic and careless Magistrate. I have often thought, that a country in a state of criminal delinquency, may be likened to a volcanic mountain, on whose surface are seen only the peaceful habitations of men, the richest verdure, and every appearance of happiness, but some unexpected, perhaps trivial cause, excites the hidden flame, and in a moment the combustion is general. It rages for awhile, carries every thing before it, and again all is calm. The exertions of the in-

inhabitants repair the dilapidations, and restore order. But the destruction was instantaneous,—the repair is the work of years.

I was in *Zillah* Nuddea the year previous to the development of its real internal condition. There was apparently no business for the Magistrate. His *Daroga* sent him no reports of *dacoities* and murders. The arrears in business were small. The duties of his office were easily performed by the Magistrate: They occupied, perhaps, an hour or two of the day. His Assistants had a very easy life. There was nothing thought of but hunting, racing, the pleasures of the table, music and dancing. The station was the resort of the gay from every part of the country. I left it to attend the Judge on the circuit. I returned to it within a few months, appointed to assist the Magistrate. I found 1700 prisoners in jail,—three Magistrates employed jointly in restoring tranquillity,

—and

—and nothing but robbery and murder to be heard of.

The state of this *Zillah* was only discovered by one thoughtless act of the *Dacoits.* I mean the attack on Messrs. FADDY and LYDIARD. The night before his execution, I heard this confirmed from the lips of one of the principal *Sirdars.* "Had it not "been for our foolishly attacking an European, we might for ever have escaped "detection."

This district first gave the alarm, which awakened from a long repose the Magistrates of the different *Zillahs;* and we shall find, that each *Zillah* in Bengal, in succession, exhibited a scene more or less resembling that described above. We have by these means become acquainted with the true state of criminal delinquency among the natives. It has excited our wonder, but it has also drawn forth our exertions, and it is daily

daily diminishing. Should these exertions be again allowed to flag, we shall soon witness, in its every feature, the seemingly exaggerated picture exhibited in this Essay.

But the principal improvement in the condition of the people will be found in their increased liberty, and in the protection which is afforded them from hostile invasion, and from the domestic tyranny of their rulers. And although our mild form of Government has not yet succeeded in creating complete security of property, or in affording speedy redress for the grievances of the *Ryots*; yet, as it admits of revision and improvement, we ought by no means to despair. Reforms ought always to be very gradual.

Is it not a great blessing to the natives, that we are now able quietly to realize our revenue, without the employment of a rapacious

pacious military force called out on every occasion to commit depredations? This was the very keystone of the former Government; and the poor *Ryots* were found to resist open violence by cunning and falsehood. Formerly the *Ryot* had to dread the Government as well as the landholders. He has now only to dread these last. Shall we long suffer this?

The native is no longer haunted by the continual dread of the ravages of an enemy. The sight of a military force is to him a novelty, and the employment of a military force in the collection of the revenues, a thing now almost unknown. Our Government is founded on principles which ought to interest every native in its durability. Their obedience to our authority is insured by the experience of our justice and their consequent security. The suspension of military controul is no longer, as formerly, attended by immediate revolt. Our public Officers,

Officers, in the collection of the revenues, cannot pursue a course of corruption and oppression, nor pervert the name and power of the Company to the worst of ends. They are under the check of the Judicial Department, and the constitution of this last has, within it, all the necessary checks on the improper exercise of power; as well as the seeds of an admirable Police.

The only channel for the redress of grievances is not now, as formerly, to be found in insurrection and rebellion, but in appeal to legal tribunals; and although the road to these still presents the barriers which the oppression of the *Zemindars* has placed to impede the progress of the poor; it is yet to be hoped, that the native, becoming more bold and independent from our assurances of protection, will in the end be enabled to overcome these obstructions.

From

From the above Observations on the unsettled and miserable condition of India under its Asiatic Conquerors, it may be easily seen, that, although in its present situation under the British Government, there are to be found many causes which render the condition of the lower classes peculiarly unhappy, and which materially obstruct the general prosperity of the country, still, comparatively speaking, the situation of the country has, since the period of the British Government in India, been highly improved.

India is, in short, in an infinitely better condition then when under its Mogul Masters; but the lower classes are neither so happy, nor the Provinces so flourishing, as they might be made. The time may come, (soon

(soon or late, it belongs to the British Legislature to determine,) when, in the gradual progress of improvement, and of that reform, which, to be effectual, ought not to be too rapid, we shall behold a brighter and happier picture than it has fallen to my lot to delineate. When, instead of those scenes of crime and oppression which have been described, we shall be able more clearly to discover the benign influence of British Government, British laws, and British society, upon the manners of a people, whom a continued subjection to despotism, a defective Code of Laws, and an almost total want of moral principle, had rendered, perhaps, the most abject and the most profligate of nations.

APPENDIX.

APPENDIX.

[*Referred to in* p. 398, Vol. I.]

ON THE PROBABLE CONSEQUENCES OF PERMITTING A FREE TRADE TO THE EAST INDIES.

THE Commercial Body in England seem firmly determined that a Free Trade shall be opened to them with the East Indies. As England chiefly exists by her commerce, this body has always the greatest weight; and there is not a doubt that they will carry their intentions into execution.

The

The exertions of our merchants, at present buoyed up with the hope of success from this trade, after having been so long depressed by the gloomy appearance of commerce in general, will give rise to a spirit and energy, which will carry away every obstacle opposed to its operation; more especially as little attention will be paid to the arguments on the other side, from the consideration of their being the suggestions of self-interest and partiality.

A Free Trade will be opened, and the returns of the second or third year will prove, by the simple and irresistible argument of actual loss, that at present every circumstance is against the probability of success in such an undertaking.

This subject is, indeed, rather out of the way of my profession; but it is not altogether unconnected with the object of the present Essay; and it excites such general interest,

interest, that I cannot avoid mentioning the difficulties which are likely to present themselves to the European speculator.

During a residence of eight years in Bengal, I have indulged in every possible opportunity, a curiosity which I have always possessed, of inquiring into the circumstances of tradesmen and artizans,—the mysteries of their profession,—the price of their labour,—and the value of the commodities used. Few subjects, indeed, to me are more interesting.

From having a competent knowledge of the colloquial languages of India, (particularly the Bengalee, which is too little studied,) and from having been (in most of the districts where I have been stationed) for several months, at intervals employed in the interior, I have had good opportunities of ascertaining the actual condition of the lower orders. The fact is not generally

known, but it is nevertheless true, that those who reside at the *Sudder* or Head Stations in our *Zillahs*, are unacquainted with the condition of the people. The reason is simply this: The country now belongs to the *Zemindars* or landholders; their influence is consequently greater than that of any other body; it is their interest that we should remain in ignorance of the miserable state of their *Ryots*. All the information we receive is through them, or the corrupt Officers of our Courts, who are, to a man, in the pay of the *Zemindars;* and so strong is the league formed against us, that when a Judicial Servant of the Company goes into the interior, it is long before he can gain the confidence of the natives. It is only by laying aside his dignity, and taking advantage of the opportunities which occur of conversing with the peasants, without the intervention of any one, that he can come at the truth. An Englishman boldly tells his wrongs,—a Bengalee studiously conceals

conceals them. Here is a curious picture. For so material a difference in disposition, we must have a competent cause. It is not wanting. An Englishman is secure of redress,—a Bengalee almost sure of destruction from opposition to the will of his tyrant *Zemindar*. If he is turned out of his native village,—seized, under cover of a real or fictitious balance of rent, and when his person is secured, if he is then sent into the head station as a suspicious character, kept for months in confinement previous to his trial, condemned on the evidence of multitudes of perjured wretches, and finally imprisoned; it is only what he had to expect,—it is only what a *Zemindar* can at all times effect.

It cannot then be expected, that information gained from so vile a source as that of the *Zemindars* can be entitled to credit. From the circumstances in which I was placed in India, and that free intercourse

with the natives, which I had opportunities of maintaining, I have been enabled to collect some information as to the real state of native trade and manufactures, which may not be unimportant. Bare information, however, of the circumstances of the country, is all I can communicate. I shall leave the reasonings to be founded on them, and the conclusions to be drawn, to those more deeply acquainted with the principles of trade.

It is a general principle of commerce, that monopolies are hurtful to a State; and it is this idea, added to other causes, that renders the Commercial Body in England so hostile to the existence of the East India Company on its present footing. But the nation ought to reflect, that monopolies are only permitted, when there is wanting a sufficient spirit of enterprise in the Commercial Body at large; and that they are only granted in favour of those daring indi-

viduals

viduals to whose exertions we are indebted for the discovery of the resources of distant countries. If the increase of our national prosperity is compatible with the existence of the Company,—if it can be proved, that their existence has actually caused such increase, then that policy which would check them, at a time when they are just beginning to emerge, after a long struggle, through a variety of difficulties and dangers, would be unwise and unjust,—inconsistent with the far-famed generosity and liberality of the British Government.

But hurried on as the nation now is, to attempt any thing, however desperate, where there exists a ray of hope to illuminate their prospects, we cannot expect much from their liberality,—poverty, ruin, and desolation are the consequences to which every Briton looks forward on the loss of foreign trade. America is at war with us; and the last resource, the last vent for our manufactures

factures is expected in the Free Trade with India.

I say the last vent for our manufactures; for on the existence of a ready and general, or a very extensive, though particular market for her manufactures, the prosperity of England depends. This prosperity has gradually increased, and has for its causes,—the perfection of her manufactures,—her fisheries, and her coal-trade,—but above all, the perfection of her manufactures; for, if these were not of consequence to her neighbours, and always demanded for exportation, the nursery for seamen afforded by her coal-trade and fisheries would be useless. The solid foundation on which England has built the most magnificent structure of commercial grandeur which any age or nation affords to our view, may be traced to the following principles (among others, which need not be here enumerated).

1*st*, The

1*st*, The importation of raw materials is a more profitable exchange for our manufactures than money; for we thus have the means of supporting our own people in the manufacture of these materials.

2*dly*, The importation of raw materials is more profitable than the exchange of our manufactured goods for the manufactures of others, even those in which we do not excel, and this for the above reason.

3*dly*, That policy is the worst of all, which introduces from other countries manufactures in which our own people might labour, such as silks, brandy, woollen-cloth and muslins.

It will be necessary that the reader keep these principles in mind while he peruses the remarks which I humbly submit to his consideration. He will be able to carry his researches much further than my limited knowledge

knowledge of the subject, or my present intention, will permit, He will give their proper weight to those facts which, at present stated by me, he shall find corroborated from better sources of information. Let him also reflect, that I am a Judicial Servant of the Company, sincerely attached to that by choice, and rivetted in that attachment, by an encouragement as generous as it was undeserved. I am forbid to trade, and have no inclination for it. I can only suffer if the Company are annihilated, and this is not likely soon to happen. Under these circumstances, the reader will receive my suggestions with less hesitation. If he doubts their truth let him controvert them, by proving, that the state of the inhabitants of India is not what I have described; and I will most gladly acknowledge my error.

The Company will not materially suffer by the Free Trade, if they maintain a competition with the merchants, and for two or

three

three years lower, as much as possible, the price of freight; for, I trust that, if it is found, after a sufficient trial, that the trade of India cannot be extended, Government will not permit one body of men merely to supplant another, without benefiting the nation, and will restore their privileges to the Company. My reasons for thinking that the Company will not materially suffer, and that the Company alone can ever conduct the trade with India, are these.

1*st*, Because they have the affections and confidence of the natives, in a degree which was never before possessed by Europeans, and which even the late measures of Government, regarding the land settlement, have not been able to shake. Were they even to lose this confidence, the memory of their tremendous power, the conquests of their armies, and the energy which can at any time be thrown into their Civil Establishments, must remain long remembered by

by the natives as the peculiar attributes of the Company; and, even if their vigour were gone, their will must continue to be long respected.

2dly, Because the natural effect of a Free Trade will be to create a constant spirit of jealousy between the Company's Servants and the merchants, and will call forth the exertions of their power in checking, by every possible means, the success of these merchants. If the nation deprive the Company's Servants of their rights, this jealousy will not be without justice.

3dly, Because the liberality of their dealings, during a long period of years, has established for them a name, as a Commercial Body, which it will be long before any other set of men, however respectable, shall acquire; and there is a regularity and confidence attending their public sales, which are highly advantageous to foreign dealers.

4thly,

4thly, Because the confidence placed in a large and powerful body of men, whose downfall is improbable, in proportion to the smallness of the capital risked by each, will always be greater that that placed in individuals, however rich and respectable, whose ruin is easy, because their whole fortunes are at stake.

5thly, Because the Company possess a knowledge of the resources of the country, and of the various minutiæ of its trade, in a degree which no other set of men can have, until they shall have had their experience; and which knowledge is indispensable in carrying on trade with India.

To these many lesser reasons might be added, but I have no doubt that these will be sufficient. Besides, it will be found, that most of the causes now about to be enumerated as likely to prevent the success of

of individuals, may be brought directly to assist the proof of this assertion, That the Company will not suffer by the Free Trade, in the event of their maintaining a competition, and lowering as much as possible their rate of freight.

It will be necessary, in the first place, to observe, that the returns of the first speculations will be in favour of the European speculator, for the following reasons:

1*st*, There is on hand at present a sufficient surplus of raw materials to meet an occasional increased demand, though not to a great extent.

2*d*, Good prices, or the hopes of quick returns, by purchasers of European goods, will induce the natives to part with the commodities generally reserved for home consumption.

3*d*,

3*d*, At present, the gloomy appearance of our trade has loaded the Indian market with indigo, cotton, sunn, silk, &c. The great demand in former years had collected those, and a vent for them is much wanted.

4*th*, There are in India, as in all countries, unthinking and sanguine speculators, whom the low price of European goods, and the novelty of the speculation, will induce to venture. These are, however, very few; for, in general, the native traders are possessed of great sagacity and foresight.

5*th*, The great collection of European goods glutting the markets, will lower the prices so much, that the Half Casts and Portuguese will become purchasers.

6*th*, The active and lively spirit of enterprize will give rise to very great exertions, as long as the result is unknown.

But

But these causes are of limited and most uncertain influence, compared to the obstacles which the merchants will meet with *after their first speculation.* There will be an immense loss of money and goods; for the causes which must prevent an increase of raw commodities in India, will then come into action. These I shall now enumerate, and then proceed to give a few remarks on them and the preceding arguments.

The speculations of the European merchants, during the first three or four succeeding years, will be unsuccessful;

1*st*, Because no speedy change is to be expected in the miserable condition of the class of peasants and manufacturers. This subject has been fully discussed in Chap. III. of this Essay. An increase of grain alone can cause an increase of other articles and manufactures; but no increase of grain is likely

ly to take place as long as such increase can only better the condition of the land-holders, not of the peasants.

2*d*, Because, even where the natives are possessed of money, still, their religious prejudices, their habits of living, and the simplicity of their furniture and dress, will prevent them from purchasing our articles.

3*d*, Because the habits of the natives in general, but more particularly of the wealthy Bengalees, are parsimonious to a degree unknown in any other nation, and of which the mercantile body at home have no adequate idea.

4*th*, Because the European Civil and Military Establishment of the Company is not subject to any great increase; and the supply of European goods has, of late years, exceeded the demand from this, the only source of steady sale.

5*th*, Because the individuals speculating will labour under every disadvantage which ignorance of the language and customs of the people, want of confidence in the native merchants, and reciprocal want of confidence on the part of the native merchants, with the knavery of *Dullals*, *Pykars*, and other brokers, will always afford.

6*th*, Because the jealousy which will be created between the Company's Commercial Servants, or private individuals long situated in India as traders, and those new speculators, will throw every possible obstacle in the way of the latter. In India, the Company's Servants are powerful, from the nature of their offices, and private traders have little chance of success in opposing them.

7*th*, Because the advantage of a speedy return, even with smaller gains, will induce the merchants to re-load with Indian produce, and to leave their European goods in

in the hands of agents, who, as they are not the purchasers, will not suffer, but gain by the goods remaining a considerable time on hand; for to commission on their sale, they will join warehouse-charges, &c. And because the employment of agents will be almost in every case necessary, from the want of experience on the part of the new speculator.

8*th*, Because, in India, European goods cannot bear being thus kept. The climate, and the numerous destructive insects, prevent it.

9*th*, Because the long period of an Indian voyage, to which the goods, probably packed in a hurry, or in too great quantities, will be subjected, will insure the destruction of a great proportion,—an evil which, even at present, is generally felt. For, with every advantage, the Captains and Officers in the Company's

Company's service can only clear themselves, and in very few instances make any thing by their investments.

10*th*, Because, of late years, a very great improvement has taken place in several of the native manufactures. These improvements will be further promoted by the increase of European adventurers, who serve as superintendants, and the more general diffusion of European articles to serve as patterns. Those who have had an opportunity of seeing specimens of their imitations, will agree with me, that there is likely to be soon some cause for jealousy. Let us look at the manufactures in leather, as boots, shoes, harness, &c. under the direction of Europeans, in Calcutta, and of natives at Cawnpore and Dinapore; the guns, cutlery and hardware of Mongheer; the hardware and locks of Ballasore; the cloths, nankeens and hair-powder of Chandernagore; the household-furniture and plate,

plate, made with or without European superintendence; the coaches and other wheeled carriages made in Calcutta and elsewhere; the lesser articles of imitation in the China Bazar of Calcutta, as *Smyth's* tooth-brushes, *Hoffmann's* jams, jellies, and preserves; native epaulets, gold and silver lace, and bullion; cloths (not woollen), tapes, needles, tin-work, wire-work, brushes, pickles, sallad-oil, vinegar, arrow-root, medicines, adulterated wines and spirits, combs, ribbons, silks, &c. These, and numberless other articles, are conterfeited with great success. They either undersell the articles of European manufacture and are purchased by the Half-Casts and Portuguese, or they are passed off on the unwary as European articles, and at the same price. The price of labour is so low, that these articles, even when manufactured of the best materials, may be sold wholesale to retail dealers, at one-fourth of the price paid for the

same of European manufacture; and under these circumstances, the purchase will in many cases be desirable.

Finally, Because the results of the first year will damp the energy of the less sanguine, and confine the trade to a few enterprising and daring speculators of capital, who, as their number is confined, will increase their investments, will sink all, and lose all.

These are the causes which more immediately protrude themselves on our notice; but the mercantile reader will find many which are unknown to me.

Thus far in the subject had I proceeded while on my passage to St. Helena, and before I had seen any papers or publications regarding the Free Trade and New Charter.

ter. On my arrival there, I was favoured with the perusal of ten numbers of the papers on the subject, published by order of the Court of Directors. I have not, in consequence of this perusal, altered one word of the arrangement, or matter of my arguments above given. My reason is this, that if my opinions on the subject are entitled to attention, it will be because they are the opinions of one who had no other source of information than his own eyes supplied.

It is, indeed, flattering to me to find, that the great mass of information contained in these papers confirms the opinions I have offered on some parts of the subject; but I do not mean by this to take any credit to myself for the conclusions which I have drawn, as no one can have made the common use of his senses, in a long intercourse with the natives, without arriving at the same.

I shall now add a few observations on the last arguments I have used, viz. those to prove that the speculations of the merchants during three or four succeeding years will be unsuccessful. On the FIRST and SECOND CAUSES,—"That no speedy change is to be "expected in the miserable condition of "the class of peasants and manufacturers," it will not be necessary to enlarge; for the truth of this position will be evident from the perusal of Chapter III. of this Essay.

The great mass of the people of Bengal,—the peasants and tradesmen, (who are also cultivators of the land, and whose gains can only increase with the wealth of the peasantry,) are unable to purchase European articles of commerce. They live from day to day, and nine tenths of them are forced to borrow their daily food, and corn to sow their lands, from the *Mahajuns* (or money lenders). On the grain supplied for their

family

family consumption, the *Mahajuns* charge the peasant 50 *per cent.*, on that furnished for seed 100 *per cent.* Besides this, by false accounts, and by taking an inhuman advantage of the situation of the *Ryots*, they often keep them in balance.

A thin coarse cotton cloth round their loins, and a coarse blanket, (the cloth in value about a shilling, and the blanket, which they only use for three months in the cold season, in value about half-a-crown,) constitute the dress of a greater part of the labouring peasantry of Bengal. To this, those who are a little better in condition, add a thin roll of muslin for a turban, in value about half-a-crown, and sometimes, though seldom, a long coarse cotton cloth dress, in value from half-a-crown to a crown, and a pair of shoes, from one shilling to half-a-crown. This dress they have never changed: It has been the dress of the country for ages past; and had they

they a mind to change, they have not the means of purchasing a more expensive dress. Among the middling, and many of the higher order, the last described dress is also worn, with this difference, that the materials are finer. Many of the *Brahmins* and better casts wear, instead of the cotton dress round their loins, a thin web of coarse silk. This lasts for many years. The highest ranks of the natives, in the hot weather, wear very fine muslins, and spangled shoes; and in cold weather, the only addition they make is a shawl thrown over their shoulders. All these articles are the produce of their own country, and are to be purchased at a cheap rate. They are much more suitable to the climate and habits of the natives than any thing we could give them. The climate requires that their garments should be thin,—their habits and their religion require that they should be constantly washed.

Fashion,

Fashion, which, in Europe, is the very life of trade, which demands constant variety of manufacture, and constant change in the forms of dress and furniture, is here unknown The fashions of the natives of India never change. They have an abhorrence of change, and laugh at our folly in our constant changes of dress and furniture.

In their households, they want none of our luxuries. Except the very higher ranks, none of the natives furnish their houses. They have no tables, no chairs, no gay couches, no knives and forks, no spoons, no plates or dishes. They eat from the ground, and sitting on the ground; their fingers furnish knives and forks Their food is one and the same all over the country. A curry of fish or vegetables among the higher ranks, and a dish of split peas and rice among the peasantry, is all that

they

they desire; their drink is pure water from a brass pot; their plantain leaf forms the plate from which they eat. In their household management and their food, they are particularly averse to any interference or innovation.

These prejudices are wisely inculcated as a part of their religion. I say wisely, for in a climate like India, they are conducive to health. A few among the middling classes will, indeed, purchase a small piece of woollen-cloth to throw over their shoulders, and a few among the higher ranks might purchase mirrors, chandeliers, and other showy articles. But of what benefit will this be to the merchants of England? They certainly do not expect to be able to effect a complete revolution in the manners and religion of a nation which, for past ages, has remained unchanged; or, at all events, they cannot expect any sudden change. They

They surely do not think that the Hindoos will eat their hams and cheeses, or drink their liquors, or wear breeches and silk stockings, or appear at their festivals in opera hats, or strut about the hot streets and roads of India in boots and buckskins. This would be too ridiculous; yet to some such revolution must the Commercial Body look forward, ere they can have any foundation for their present hopes.

" Depuis que les autres parties du monde
" ont ouvert leur communication avec
" l'Inde, elles ont toujours échangé des mé-
" taux contre des arts et des denrées; la
" Nature a prodigué aux Indiens le peu
" dont ils ont besoin; le climat leur inter-
" dit notre luxe, et la religion leur donne
" de l'éloignement pour les choses qui nous
" servent de nourriture, comme leurs usa-
" ges, leurs mœurs, leur gouvernement sont
" restés les mêmes au milieu des révolu-
" tions

" tions qui ont bouleversés leur pays, il n'est
" pas permis d'espérer qu'ils puissent ja-
" mais changer. L'Inde a été, l'Inde sera
" ce qu'elle est."*

Third Cause.—" The habits of the na-
" tives in general, and particularly of the
" wealthy among them, are mean and par-
" simonious to a degree, of which the Eu-
" ropean speculators have no adequate
" idea."

The whole life of a Bengalee, of the middle rank, till he has amassed a large fortune, is a life of privation and strict economy. The man who possesses lacks of rupees will yet be found in the same miserable mud hut, unfurnished, and possessing no comfort. When the best part of his life is over, and he begins to grow old, the *Brahmins* whisper to him, that it is time he should

* Raynal.

should repent of his sins, and by ample disbursements, make up for a life of iniquity: He begins by building a splendid house, with numerous accommodations, for his heavenly guides: He endows religious establishments: He expends immense sums on the marriages of his family, his adopted children, or his near relations: He gives alms: He goes on a pilgrimage. How is wealth thus disbursed to benefit the Commercial Body in England? They do not in the above-mentioned ceremonies, &c. make use of one single article with which we can supply them. Their disbursements do, indeed, benefit the lower orders, and the *Brahmins*; but, if it can be proved that neither of these will buy from us, then what avails their money?

The *Brahmins*, were they to set the example of introducing our European luxuries, must, in the first instance, renounce the

the doctrines, and forego the habits which they have preached and practised for ages. But from the *Brahmins* we have little to expect; their avarice is unbounded, and they pass their lives in hoarding up treasures, to be spent by their dissipated relations; to be still hoarded and encreased by these last, or to be taken from them by the *Dacoits* or other robbers.

For many years, such has been the insecurity in which the natives of India have lived, that the addition of any article of luxury, or the display of wealth, insured their being attacked. The state of things has indeed improved, but they have not yet attained a sufficient degree of confidence to admit of a change in their habits and way of living.

This is also the case with the lower orders. Any improvement in their circumstances

stances marks them out as victims for the *Dacoits.* They therefore bury their gains till they have become considerable, and then spend them in the manner above described, in expensive religious ceremonies and shows, and in feeding the *Brahmins.*

Among the rich *Baboos* of Calcutta and other great towns, we may sometimes see an attempt at imitations of European customs at their entertainments, and in their houses, and in the course of time, their ideas on this subject may become more liberal; at present the display is ludicrous in the extreme. By prowling about at auctions, they pick up a few chairs of different patterns, couches of antiquated fashion, prints, pictures, and damaged mirrors, broken chandeliers and lustres, and a sad variety of miserably splendid articles; these are arranged without any

 method

method in their rooms. I shall here mention two instances of this ludicrous display.

At a feast lately given by the richest individual in a certain district near Calcutta, at which I was present, a supper was attempted to be served up in the English style. The service of stone-ware was *à la pic nic!* An odd dish of many sets, differing in size, colour and kind. Glasses also *pic nic*, and of various convenient sizes. Knives and forks of a variety of curious patterns. The host, on being asked if he had supplied wine, replied in the affirmative, and produced a bottle of gin, three bottles of beer, and two of claret!!! Yet where, according to his ideas, money was judged necessary, this man was not illiberal; that same marriage ceremony cost him two lacks of rupees. Innumerable *Brahmins* were fed and rewarded. The beggars all

round

round the country were entertained. The bridegroom was loaded with jewels, and grand processions and illuminations, with fireworks, and all the trumpery of Indian use, were made for a week together. It is thus their wealth is dissipated.

The Rajah or native Prince, and formerly head landholder of the same district, though now poor, compared to the above-mentioned gentleman, must yet have his occasional display of this kind, and the miserable combination of pride and meanness is there very conspicuous. He lately purchased a gig of the neatest and most fashionable make, but here he stopped. To purchase a suitable horse and harness went sadly against the grain; he therefore yoked one of the ponies, called *tatoos* by the natives, and commonly used by beggars. Where the harness was deficient, he supplied the gaps with good strong ropes; and

thus equipped he drove through the station. Behind him was a man on an excellent horse, and very richly caparisoned in the native style. These horses are kept by the *Zemindars*, to be shewn off at marriages and other ceremonies. The Rajah and his attendant presented the most ludicrous contrast I ever beheld.

If a native buys a horse for his own use, his price seldom exceeds thirty rupees. If he buys a gun, it is an old one, perhaps made in the country, and of about the same value as his horse. If it is fashionable to have mirrors in his house (a fashion lately introduced among some of the natives), he will not go the length of a handsome one, but conceives that he can make up for this in number. In the palace of the above-mentioned Rajah, there is a room into which he conducts his visitors, the upper part of the wall of which is lined all round with little looking-

looking-glasses, in red wood and gilded frames, such as we see Jew pedlars selling in our streets at home. There are above a hundred of these of every description. The poor Rajah was delighted at what he conceived to be our admiration of his arrangement; the harpies and sycophants around him held up their hands and exclaimed, *Wah! Wah!* He believed them, and was satisfied with his taste.

Is it from such as these, that our merchants draw their hopes of success?

Among those of the natives of the Upper Provinces, who might be called gentlemen, and who are the sad remains of Indian Nobility, there are, indeed, a few who have the inclination to purchase our luxuries; but their number is gradually lessening, and the means of enjoyment are departing from them.

The

The next succeeding Nobility of India will rise from the *Aumilah* (or officers) of our Courts. Avarice, parsimony, and the never-ceasing wish to encrease their gains, are the leading features of their character. From these little is to be expected; for with them, "Crescit amor nummi quantum "ipsa pecunia crescit."

The FOURTH CAUSE adduced to account for the probable loss of private speculators is sufficiently evident, and requires no further notice.

On the 5th, 7th, 8th, and 9th CAUSES, which are of a Commercial nature, the merchants will be better able to comment than I can. I shall, however, make a few observations on the 6th and 10th CAUSES, as there appears a general want of knowledge on most subjects connected with the history and manners, the arts and manufactures, of the natives.

SIXTH

Sixth Cause,—"The jealousy created "between the Company's Commercial Ser- "vants, or private individuals long situated "in India as traders, and the new specula- "tors, will throw every possible obstacle in "the way of the latter. In India, the Com- "pany's Servants are from their situation "very powerful, and private traders have "little chance of success in opposing them."

The Company have been at an enormous expence in erecting factories, and maintaining large and liberal establishments for the manufactory of cloths and muslins, and of silk, sunn, &c. A great number of their Civil Servants are employed in conducting their trade; under them are employed a large body of respectable and intelligent natives, possessing, from the countenance of the Company, considerable power among the natives. The prices allowed by the Company to manufacturers are liberal, and

great attention is paid to the regular adjustment of accounts.

Where, from the indolent or fraudulent habits of the natives, it becomes necessary to keep them in awe, the commercial residents have sufficient power, and can always have the warm assistance of the Company's Courts in adjusting any difference between them and the manufacturers. All these things combine in making their influence extensive over the natives, and all these are necessary for the support of their trade. The commercial residents have also large dealings with the natives on their own account. If the Commercial Body at home have it in view to deprive these respectable men of their bread, is it to be supposed that they will tamely submit? Is it not rather to be expected, that they will do their utmost to prevent the interlopers from success.

There

There is yet another weighty consideration; it is, That the manufactures of the natives fall off where they lose the superintendence of intelligent residents and supervisors; and the superiority of the articles, manufactured at our factories, and under experienced residents, is generally acknowledged. They will always have a preference, and bear a competition even at higher prices. It will be very excusable, and even laudable, in our Commercial Servants to oppose the new speculators; for as their country cannot be benefited by the mere transfer of the trade from one body of men to another, without the least hopes of increase; so it is most unjust that they should suffer, merely to please others.

The fair and open statements of the Company, in the papers lately published on the subject of the New Charter, as well as the actual state of the *bazar* (market) in India shew,

shew, beyond a doubt, that no increase of trade is to be expected; and no principle of justice will permit, that one body of tradesmen should supplant another, who are equally, or even more deserving,—more deserving, because their exertions, during a long period of years, have made the Indian trade what it is now. It will now be the best policy, on the part of the Company, to reduce, as much as possible, the prices of their manufactures, but even at a loss, to maintain, for a short time, their commercial establishments in full vigour; and thus, by the superiority of their manufactures, and by every possible use of their power and influence, to maintain a competition with the merchants. It will not be a competition of long continuance; and by relinquishing it, their Commercial Servants, their Naval Officers, and the thousands of individuals depending on their trade, must be ruined. How frightful is this

this alternative, and yet how little thought of by frigid political calculators. Witness the letters of the Earl of Buckinghamshire on the subject. With what cool indifference we are told by this politician, that against the entire failure of the prospects so sanguinely entertained, the Company have the consolation of reflecting, "that "the very worst that could occur in the "abandonment of the trade by the public, "would be, that matters would return "again to their present state."

Such an argument could not be seriously addressed to the Directors of the East India Company. It is treating the glorious fabric of our Eastern Empire with that degree of respect generally shewn by a baby for his house of cards, as easily rebuilt as it is overthrown; but it is wonderful with what a happy composure the English statesman

can

can legislate for a country situated 10,000 miles from him.

> Si fractus illabatur orbis,
> Impavidum ferient ruinæ.

Fortunately for the Company, they have yet their advocates among the counsellors of the realm. The candid, the intelligent, the liberal view of the subject taken by Lord CASTLEREAGH, in his speech on the opening of the question of the renewing of the Charter, cannot be sufficiently admired.

TENTH CAUSE,—" Because of late years, " great improvements have taken place in " several of the native manufactures. " These improvements will be further pro- " moted by the increase of European super- " intendants, and the more general diffu- " sion of European articles to serve as " patterns," &c.

It

It is not likely that the manufactures of India, here mentioned, will arrive at such perfection as to rival those of Europe, or become worthy the attention of merchants for exportation to other countries. It is sufficient if they diminish the demand for European articles of the same description in India; and of this there cannot be a doubt. The greater part of these articles are sufficiently well manufactured to satisfy the lower orders of Europeans, the half casts, and the Portuguese; and thus one great source of sale is removed from the European merchant. Many of these articles are brought to such a degree of perfection, that they are purchased by Europeans of the first respectability. I shall instance the leather work of India, manufactured under the superintendence of Europeans, and in some places without this superintendence, such as shoes, boots, harness, &c. The carriages made in Calcutta, and used

used by Europeans all over India, and the household furniture and plate made under the superintendence of Europeans.

The leather prepared in India is not so lasting as that in Europe; but for wear in India, it is, in every other respect, superior: It is soft, light and pliant, and preserves these qualities to the last, unless exposed to wet, an accident that very seldom occurs, as almost the whole life of an Indian is passed under cover. Allowing that it lasts one-half the time, its price is not above one-fourth of the price of the same article of European manufacture, when manufactured under European superintendence, or one-eighth if made by a native. The price of a pair of shoes, made under European superintendence, is from two to three rupees, (or from 5s. to 7s. 6d.); made by a native, from eight anas to a rupee, (or from 1s. 3d. to 2s. 6d.)

The

The wages of a good shoemaker in Bengal are from six to ten rupees a-month, including all expences. Hides are to be had in great plenty, and the operation of tanning is simple and speedy. It is managed by the wives of the shoemaker cast, who throw the skins into a pit with a little lime, the bark of the *babool,* and a few other common and simple materials. The leather tanned in this way is not, however, so good as that tanned and curried by Europeans. This last is remarkably fine. Coach, gig, and other harness is made in Calcutta, of every description and price, from 14 to 160 rupees, the price chiefly depending on the mounting, the price of which is very high, when commissioned from Europe. It is counterfeited in the *bazars* of Calcutta, and may be had of all prices, according to the ability of the artist. The price of European harness is very high; and, though it certainly has the advantage of lasting much longer,

longer, yet it meets with no sale. The fashions constantly change; and where a set of harness is bought so cheap, every one can afford to change with the fashion.

The carriages made in Calcutta are, in the opinion of most people, for Indian service, superior in every respect to those of Europe. The wood is better adapted to the climate, being much more lasting; and the workmanship has, by the care and attention of the European superintendants, been brought to the highest degree of perfection. There are three or four established houses in Calcutta, which supply the demand for carriages among the higher ranks; and there are innumerable low Europeans, half casts and Portuguese, who construct carriages of the gayest and most fashionable patterns, but of slight materials, suited to the purses of the lower ranks. So cheaply are these articles manufactured, that there is scarcely a Euro-

pean,

pean, half cast, or Portuguese, who does not drive his gig, or carriage of some description. For the construction of these, the iron work, the paint, the beading, and the different trimmings, are all made in the country, and many of them so well, as not to be distinguished from those of European manufacture. The wages of a good coach-wright are, on an average, eight rupees *per* month; a smith the same; a painter, about ten rupees; a coach-tailor, seven rupees; and a harness-maker, from six to eight rupees.

The carpenters, cabinet-makers, and silver-smiths, who have been brought up under Europeans, are equal in skill to our best artists in these lines at home; and the furniture and plate of India are remarkably beautiful. The wages of a good joiner are from six to ten rupees *per* month; those of a silver-smith a little higher. Wood of all kinds is cheap; and there are a variety of very beautiful woods, fit for cabinet work, produced

produced in the country. I shall instance the *chukkarssy* and *toon-wood* of Bengal. The *toon-wood*, from its lightness, strength, and beauty, is admirably adapted for making household furniture; when well selected, it is very little inferior to, and very much resembles mahogany. Ebony is the produce of the Berbhoom Hills, and is also imported from Ceylon, from which place satin-wood is also sent; the prices of both are very moderate. The Bengalees need no large workshop or extensive premises; they work chiefly in the open air. If allowed to follow their own plans, their tools are very few; a wooden mallet, a saw, a chisel, a plane, and a double axe, which, by turning, serves for an adze, and the head of which answers the purpose of a hammer; these, and a simple drill and bow, form the tool-chest of a Bengalee.

In Bengal, every kind of labour is cheap. Materials of almost every description are to be

be found; and European superintendence is never wanting, where it finds encouragement. The more general intercourse with Europeans, on the opening of the Free Trade, and the impossibility of preventing these from settling in the country, will tend to improve the manufactures of the natives, the patience and perseverance of whom will enable them, under skilful masters, to imitate any thing.

I have already enlarged more than I intended on this subject, and must now take leave of it. A little time and experience will go further to convince the English merchant of his error, than volumes of argument.

APPENDIX.

Referred to in p. 39, Vol. II.

SONG OF THE DACOITS.

THE songs of the *Dacoits*, while at their work, or more generally on their way to it, are very humurous, though often indecent. They are chiefly composed of sarcasms against the Magistrates or their Assistants, or of indecent love stories. I have frequently been honoured with a place in their poetical effusions, in which I was distinguished by the word "*Bucha*," or the Young One. The following may be reckoned a pretty literal translation of one of these productions.

tions. I have in it parodied the words of a very beautiful song,—" *Here's a health to " those far away.*"

Here's a health to the jolly *Dacoits*
Who are hung in the law's fatal chain,
Here's a health to JOHN ELIOT, whose daring exploits
I never shall witness again,
No, never.

'Tis hard to be severed from those
With whom we for ever could steal;
But these turn-tail *Goindas* are now our worst foes,
For which may the devils in hell
Take their liver.

Oh the days of *dacoity* I've seen,
In Nuddea, Burdwan, and Nattore,
Their mem'ry would still make my hair stand on end,
But I never shall witness them more,
No, never.

Fare ye well, then, ye merry *Sirdars*,
Ye thieves, and receivers of name,
Ye *Sindeal* Blackguards, ye old *Thangeedars*,
We shall live on the records of fame
For ever.

To

To the wife whom he tenderly lov'd,
Thus bemoan'd his hard fate *Sirdar Goluck ;*
But he eat his fish-curry, smok'd bang, and thus prov'd,
That death to Hindoos was a frolic
So clever.

THE TANJORE MAHARAJA SERFOJI'S SARASVATI MAHAL.

APPENDIX.

Referred to in p. 312, Vol. II.

SPECIMEN OF A MEMORANDUM-BOOK.

Mr. J. S. *Nuddea.* A *roobakary* (or proceeding of Court), ordering that no one be confined or acquitted without an express order from a Magistrate.

Mr. A. F. T. *Kishnagur.* When any stolen property is sent in, the prisoner to be present, and the list of such property made out in Court: This to prevent frequent thefts from the *malkhana* (or house for keeping stolen goods).

 L. M. L.

L. M. L. *Hoogly.* Not to act immediately on the information of *Goindas*, but rather to put the persons accused under charge of *Gomasthas*, or other responsible persons in their villages, and to make them give security to appear when required.

C. P. *Jessore.* An order to *Darogas* to prevent their levying money as *khorakee* (or food allowance), while apprehending *Dacoits.*

A. F. T. *Kishnagur.* When a man of respectability is put to labour on the roads, make the jailor sign a declaration that he really is forced to labour, for, by their corruption many a good example is lost.

A. F. T. *Kishnagur.* Forbid *Burkundauzes* from going to the *haths* (or markets), and *hath-rents* being taken in kind, for both cover *tola* (a duty illegally raised at markets).

C. P.

C. P. *Jessore*. An order to all indigo planters to prevent their imprisoning any one.

A. F. T. *Kishnagur*. All *Aumeens* (agents employed in measuring land, &c.), to enter into an engagement themselves to defray all charges incurred after the completion of their *mead*, (or period agreed on for the performance of their work).

A. F. T. *Kishnagur*. A person who has once been in jail, guilty or innocent, is sure to get a bad name: he is sent in on all occasions. To prevent this, order all *Gomasthas* and *Darogas* to see that he gets a place of residence, and that, except on good grounds, he is not sent in.

C. P. *Jessore*. A proclamation, ordering all *Zemindars* to give in a list of their *Hurkaras* (or messengers), *Burkundauzes* and other

other servants, under a heavy fine for disobedience.

Sir C. B. *Beerbhoom.* An order to all gold, silver, or brass smiths, to buy no goods without informing the *Daroga.*

Sir C. B. *Beerbhoom.* Forbidding the *Zemindars* giving the superintendance of villages to those convicted of crimes, or released on security.

Sir C. B. Forbidding sellers of spirits from receiving clothes or other articles in payment.

Chittagong. A General Proclamation, denouncing punishment for false complaint.

M. W. B. *Jungle Mihals.* Forbidding the taking of higher rents than those stipulated by the leases.

Benares.

Benares. Forbidding, under a heavy penalty, the manufacture of instruments used by thieves.

City of Benares. Ordering the *Cotwal* (or head police officer in cities), to send to the Magistrate all whose houses have been burnt,—to ascertain the cause of the frequent fires.

Bareilly. A drum to be beat on the appearance of *Dacoits* in a village, and every one, under a heavy penalty for disobedience, to repair to the spot.

Bareilly. Declaring the killing a thief or robber found in the act to be no crime; and ordering all people to oppose the *Dacoits.*

Bareilly. Forbidding the use of false weights, under a heavy penalty and imprisonment.

Saharunpore.

Saharunpore. All letters dispatched from *thannah* to *thannah* to be forwarded with all speed.

Goruckpore. Order that every *perwanah* (or order of importance) be copied within a day, and if of lesser moment, within three days; that it be issued, and a copy-book kept by one of the *Moonshees* of the *Foujdary* (or criminal Court). This *Moonshee* and the *Nazir* (Sheriff) to have all responsibility for the copying and dispatching of orders.

Mr. J. P. *Nattore.* Permit no one *Burkundauze* to come straight from his *thannah* to the Head-Station, but let a sort of post be established, each *Darogu* sending his reports to the nearest *thannah* only; the last to the next, and so forth. This prevents the constant communications between *Darogas* and the Head-Station, for the forwarding of their own bad purposes.

Mr.

Mr. J. E. *Kishnagur.* Make the witnesses in every trial execute an agreement to appear at a certain day, and to come in of themselves, and unattended. By this the constant oppression of *Peons, Burkundauzes*, and other descriptions of runners, is prevented.

W. B. B. *Burdwan.* On acquitting a prisoner, make the villages execute a *zimma nameh*, stating that they have received him, and are answerable for his appearance and conduct. If they will not receive him, let him be sent in again.

W. B. B. *Burdwan.* Security is often offered for others, by men possessing no means, or with the intent of alienating those means. Before *feal zamin* (or security) is taken, a proclamation to be made, stating the property of such a one, to such an amount, and consisting of such and such effects, &c. to be attached, and unalienable in

in any way, desiring all who may have claims on it to come forward; and no security to be taken without this precaution.

N. B. In giving these memoranda, I have not thought myself justified without their consent in giving the names of the Magistrates at length. My intention was more that of giving a specimen of a memorandum-book to be kept, than an abstract of the most useful orders from among a number of others; but those here selected will be found at times highly beneficial.

GLOS-

GLOSSARY.

In the following Glossary, those Indian words which occur only once, and are there explained, are not inserted.

Abwab, The various titles, whether legal or illegal, under which the *Zemindars* make collections from the *Ryots* or peasants.

Ameen, A person sent by the Civil Court to investigate on the spot the case of a contested boundary,—to measure land,—to describe its appearance,—ascertain its value,—and many other purposes.

Aumil, An officer employed in the collection of the revenue.

Baboo, An appellation given to a rich native, or to any one for whom we wish to shew respect.

respect. It is the peculiar title of that nefarious class of natives who lend money to the young writers.

Budmash, The general term given to all suspicious and bad characters.

Bukshee, the appellation given to the officer who assists the *Nazir* or Sheriff in keeping accounts, making out lists, &c: Also the person acting in the same capacity under a *Daroga*.

Burkundauze, An armed runner employed in police, and in guarding jails, &c.

Cazee, One of the Mussulman Law officers, and Judge of all claims of inheritance and succession in their Courts.

Chokedar, A watchman.

Corah, The Mussleman whip, employed in the punishment of criminals.

Dacoity, A species of robbery peculiar to India, practised by large armed gangs during the night, and generally by torch-light,

Daghee, A criminal, either branded, or having the marks of the whip on him; also used

used to denote any one who has been once imprisoned.

Dahila, A receipt granted for rent paid.

Daroga, The Head Police-officer at a *Thannah* or Police Establishment.

Dauk, The Posting Establishment in India, whether for travelling, or for the dispatch of letters.

Dewan, A general term applied at the present time to denote the Head Native Officer under a Collector. The head manager of a commercial resident, of a merchant, or of a private gentleman. Under the Mussulman Government, the *Dewan* was the Magistrate for the decision of causes relating to real property; but he seldom exercised his authority in person.

Dussauds, A species of village-watchmen.

Foujdar, An Officer of Police; and under the Mussulman Government, Judge in all crimes not capital.

Foujdary, The Criminal Department.

Futwah, The opinion in civil, and sentence in criminal cases, delivered by the Mussulman Law-officers.

Ghaut, A ferry, a landing-place; also a narrow pass.

Goinda, An Indian spy used in Police.

Goindugee, The system of *espionage* now used in Indian Police.

Gomashta, An agent employed under the *Zemindars* in the collection of rent, and in the management of the villages; also generally an agent.

Gowala, A cow-keeper.

Haree, One of the lowest classes among the natives, generally employed in the menial offices about the houses of Europeans, as sweepers, scavengers, &c. They are also frequently employed as watchmen.

Haut, A market.

Ijara, A term for a particular description of Indian lease, fully described in the body of the work; also generally a farm.

Ijaradar,

IJARADAR, The possessor of such a lease, a farmer.

ISHTAREE, a person proclaimed as a criminal, or summoned on accusation.

JELLAUD, The executioner.

JEMADAR, A general term given to the Head of the *Peons* or runners belonging to a *Daroga*; the head officer of a small detachment of men, whether military or otherwise.

KHAS LANDS, Are those lands managed under their own superintendence, either by the Government or by the landholders.

KOTKINA, A description of lease, fully explained in the body of the work; also generally an under-farm.

KOTKINADAR, The holder of the above lease.

KUBOOLEEUT, A covenant or agreement given by the *Ryots* or tenant to his landlord.

LAHRAJE, Land held rent free.

MAHAJUNS,

Mahajuns, A peculiar description of Indian money-lenders, who lend money to the peasants, to receive payment in grain.

Malkhanah, The room or house in which stolen property and the arms of the robbers are kept.

Mead, The period allotted for a criminal's confinement; also, generally, a period of time.

Mirda, The head of the peons or runners.

Mochee, A shoemaker and dealer in leather work.

Mochulka, An agreement.

Mocuddim, A head peasant in a village; and, generally, a leading person.

Modee, A description of chandler or grocer.

Mofussil, A term used to denote the interior of the country, as opposed to a town or head station.

Mooftee, An expounder of the Mussulman law.

Mundil,

Mundil, An agent employed under the *Zemindar* in the collection of revenue in the villages, similar to the *Gomashta*.

Naib, A general term, used to denote an Assistant or Deputy; as *Naib-Nazir*, an Assistant or deputy to the Sheriff.

Nazir, A Sheriff.

Nigahban, A watchman.

Nizamut-Adalut, The Head-Court of Appeal in criminal matters.

Nukubzun, A description of thief, who enters the houses of the natives, by cutting a hole in the wall.

Nukubzunny, The crime last described.

Nullah, A running stream.

Paick, A runner or footman, employed by the *Zemindar* in the collection of the revenue; also, generally, a messenger.

Para, A division, street or place in a town.

Pausban, A watchman.

Peon, A foot messenger,—a runner.

Podar,

Podar, A person who gives change for money,—tries the weight of coin,—and buys and sells the cowries or shell-money.

Pottah, The paper in which the conditions of a lease are written.

Pucka, Any thing built of brick and mortar is called *Pucka*, in opposition to *Cutcha* or any thing built of clay.

Purwana, An order.

Putney, A description of Indian lease, or under-farm, described in the body of the work.

Putnydar, The holder of such lease.

Putwary, An agent of the *Zemindar*, employed in keeping the accounts in the villages.

Pykar, An itinerant pedlar; also an intermediate agent employed in the sale of any thing.

Rahzun, A footpad,—a highway robber.

Razeenma, An amicable adjustment.

Ryot, A peasant.

Shasters, The Sacred Writings of the Hindoos.

Sherishta, The record office,—the records.

Shroff, A money changer.

Sind, The hole cut in the wall by the *Sindeals*.

Sindeal, A description of thief, who robs a house by cutting through the wall.

Sipahee, A native soldier.

Sirdar, A chief,—the head of a gang.

Sonar, A goldsmith.

Soodder, The lowest of the four classes of Hindoos.

Sooree, A wine maker,—a seller of spirits.

Sunnud, A written commission,—a grant of land.

Talookdar, The holder of a talook or grant of land, described in the body of the work.

Tehseeldar, A collector of revenue.

Thana,

Thana, The Police Establishment of a *Daroga* or police-officer,—a watch-house.

Thanadar, The person managing a *thana*,—a head watchman.

Thangeedar, A receiver of stolen property.

Vakeel, A native attorney,—a pleader in our Civil Courts.

Zamindar, A security,—a cautioner.

Zemindar, A landholder.

Zillah, That division or portion of the country subjected to the authority of each Indian Judge and Magistrate.

FINIS.

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